

NOT FOR PUBLICATION – For Upload

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civ. No. 1984-104
)
 GOVERNMENT OF THE VIRGIN ISLANDS,)
)
 Defendant.)
)
 _____)

ATTORNEYS:

Donald G. Frankel, Esq.
U.S. Department of Justice
Washington, D.C.
For the plaintiff,

Michael Law, Esq.
Assistant Attorney General
St. Croix, U.S.V.I.
For the defendant.

ORDER

More than **seventeen** years ago, on March 21, 1984, the Environmental Protection Agency filed this action on behalf of the United States in an effort to remedy the many serious violations of the Clean Water Act being committed by the Government of the Virgin Islands.

WHEREAS, in 1985, the parties entered into a consent decree, which was thereafter and immediately ignored for many years by the Government of the Virgin Islands, and

WHEREAS, in 1991 the United States moved this Court for enforcement of the consent decree, and

WHEREAS, on January 21, 1996, more than **five and one-half** years ago and after several court proceedings, the Court approved and entered an Amended Consent Decree intended to avoid "prolonged litigation and to further the public interest," signed by the Governor of the Virgin Islands, as chief executive of the Government of the Virgin Islands, the Attorney General of the Virgin Islands, and the Commissioner of the Department of Public Works of the Virgin Islands, and

WHEREAS, despite the many assurances by the Government of the Virgin Islands that it would be able to meet the schedule and otherwise comply with the provisions it had negotiated with the United States and memorialized in the Amended Consent Decree, and despite the many accommodations extended by the United States and this Court, the Government of the Virgin Islands failed to prevent the nearly complete and total breakdown of the St. Croix waste water treatment facilities by the end of 1999, which resulted in millions upon millions of gallons of raw sewage being pumped directly into the Caribbean Sea, and

WHEREAS, on February 12, 2000, after emergency hearings requested by the United States, the Court entered an order incorporating the deadlines by which the Government of the Virgin Islands assured the Court it could repair and make operational the nearly defunct St. Croix waste water treatment facilities,

and

WHEREAS, after some repairs were successfully completed, the Court entered a new order on September 6, 2000, setting revised deadlines to complete the repairs ordered on February 12, 2000, and

WHEREAS, after September 6, 2000, the Government of the Virgin Islands continued to exhibit an infuriating unwillingness and/or inability to comply with the Court's orders or to make the St. Croix Waste Water Treatment Plant operational, and in particular, to select a contract manager to operate and maintain the Waste Water Treatment Plant as ordered, and

WHEREAS, on October 26, 2000, the Court summoned various government officials to appear before it and explain why the Government of the Virgin Islands had not yet complied with the Amended Consent Decree and many of this Court's subsequent orders, and

WHEREAS, in the face of threatened sanctions from the Court, the Government of the Virgin Islands made a comparatively impressive showing at the October 26th hearing of its purported financial and managerial commitment to repair and maintain the St. Croix sewage treatment facilities, and

WHEREAS, as a result of that hearing, the Court, being somewhat satisfied with the Government of the Virgin Islands'

promises and pronouncements, entered an order on December 13, 2000, setting new deadlines for the Government of the Virgin Islands to bring the sewage treatment facilities on St. Croix into compliance and reducing the period for which the Government of the Virgin Islands is required to submit status reports from weekly to monthly,¹ and

WHEREAS, despite the passage of nearly one year since the last hearing in October 2000, the Government of the Virgin Islands continues brazenly to ignore this Court's orders, and, as a result, it appears that the Government of the Virgin Islands has allowed various St. Croix facilities once again to fall into a state of dismal disrepair and desuetude, and

WHEREAS, the Government of the Virgin Islands cannot even be bothered to submit monthly reports to the Court as ordered on December 14, 2000, and

WHEREAS, the utter contempt that the Government of the Virgin Islands has persistently shown to its obligations under the Amended Consent Decree and to this Court exhausted the Court's patience, and

WHEREAS, the chief executive officer of the Government of

¹ The Memorandum accompanying the December 13th Order set forth at length the Court's emerging hopes, in spite of abiding frustration, that the Government of the Virgin Islands had entered into a new phase of long-term commitment to repairing its deteriorating waste water treatment facilities. This Memorandum is available on the District Court website at <http://www.vid.uscourts.gov>.

the Virgin Islands, Governor W. Turnbull, recently submitted two supplemental appropriation bills to the Legislature that would authorize the Government of the Virgin Islands to spend an unexpected \$100 million income tax "windfall," and

WHEREAS, one of the Governor's appropriation bills contained no appropriation specifically related to sewage, while the other contained an appropriation of a mere \$250,000 "for the maintenance of the territorial sewage system," an amount unlikely to fund the comprehensive repair and maintenance necessary to bring the Government of the Virgin Islands into compliance with the Amended Consent Decree, this Court's orders, and relevant federal law, and

WHEREAS, although the Legislature eventually appropriated the above-mentioned \$250,000 in Act No. 6427 § 1(m),² it appears that no amount of the "windfall" has been requested by the Governor or appropriated by the legislature to bring the Government of the Virgin Islands into compliance with the requirements of the Amended Consent Decree and this Court's orders, and

WHEREAS, the constant refrain of the Government of the

² Governor Turnbull also recommended the appropriation of \$1,000,000 to fund the start-up and operating costs associated with the establishment of a "Virgin Islands Waste Management Authority." The Legislature appropriated, but reduced the amount to \$600,000 for this purpose. See Act No. 6427 § 73(b).

Virgin Islands has been that it lacks the money to do what it agreed to do in the initial and amended consent decrees, or to comply with various aspects of this Court's recent orders, and

WHEREAS, it thus appears that the Government of the Virgin Islands has failed to comply with the terms of the Amended Consent Decree and many aspects of the Court's orders of February 12, 2000, September 6, 2000, and December 13, 2000, despite its promises, representations, and the recent \$100 million "windfall," and

WHEREAS, the recent reports on St. Thomas of raw sewage being pumped into the sea, which forced the closing of a public beach, as well as reports of the lack of operational personnel at the new St. John facilities, give fresh evidence that the Government of the Virgin Islands has generally failed to comply with the Amended Consent Decree as a whole, it is hereby

ORDERED that the Government of the Virgin Islands shall appear before the undersigned on Thursday, October 18, 2000, at 9:30 a.m. in the St. Thomas Division of the District Court to show cause why it should not be held in contempt for its continued and flagrant failure to comply with the Amended Consent Decree and this Court's orders. The Government of the Virgin Islands shall bring with it those persons responsible for and familiar with the status of the its compliance, including, but

not limited to, Governor Charles W. Turnbull, Commissioner Wayne Callwood, Department of Public Works, Mr. Joseph Bradford, Utilities Director, Department of Public Works, St. Croix, Mr. Ira Mills, Director of the Virgin Islands Office of Management and Budget, and a government representative familiar with the status the contract negotiations for the maintenance of the St. Croix waste water treatment plant. It is further

ORDERED that the Government of the Virgin Islands and the United States each shall file with the Court by October 10, 2001, a detailed report on the compliance of the Government of the Virgin Islands with the specific repair and reporting deadlines set forth in the Court's orders of February 12, 2000, September 6, 2000, and December 13, 2000. Additionally, in light of the recent reports relating to St. Thomas and St. John, each party shall submit a separate report on the current status of the compliance of the Government of the Virgin Islands with the Amended Consent Decree as a whole. It is further

ORDERED that the Government of the Virgin Islands and the United States each shall file with the Court by October 10, 2001 the dollar amount required to bring the Government of the Virgin Islands into compliance with the Amended Consent Decree and this Court's orders.

ENTERED this 27th day of September, 2001.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

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