

- c) "Only small plumes are anticipated, however, the emergencies will be monitored, the amount of escaping mud document [sic], as well as, the success of the clean up."
- d) "The mud is extremely heavy and will settle out almost immediately. Water samples will be taken at the first emergence and the length of time the material remains in the water column, and the extent of spreading of the material will be noted. The material will then be collected with the use of a suction device."
- e) "The extent of the settled plume will be marked and photographed. The area will be cleaned and the area will be re-photo surveyed."
- f) that baseline photographs would be taken "[p]rior to any construction activity. . ." and "[d]uring the baseline [sic] detailed analysis of all species within the quadrants, identifying them to genus (sic) and species . . ." would be performed.
- g) "In the event of any water quality emergency or when NTUs, TSS, or secchi disk readings fall outside the allowable limits, the Division of Environmental Protection (DEP) will be immediately notified in person or by phone."

37. Upon information and belief, at the July 23, 1995 Legislative hearing on the application for minor CZM Permit No. CZX-28-94W, AT&TVI testified that the cable laying project would be constructed in an environmentally sound manner.

38. On or about March 14, 1995, Defendant, AT&TVI, Inc. was issued Coastal Zone Permit No. CZX-28-94W.

39. Coastal Zone Permit No. CZX-28-94W authorized "the Permittee to drill eight 5.75-inch OD cable conduits to water depth of 45 feet and placement of same cable on the ocean floor seaward of Plot 4-A, Estate Northside, near the town of Frederiksted, U.S.V.I."

- c) "Anytime mud escapes the driller is aware of it by a drop in pressure in the line." Section 6.05d at p. 6-49.
- d) "If a pressure drop is noted a shoreline survey will be conducted to look for escaping mud. Any and all mud will be collected." Section 6.05d at p. 6-49.
- e) "When there is a break through, the pressure on the mud immediately drops and the pumps will be cut off. The drilling mud will be vacuumed up once the drilling for that conduit is completed." Section 6.12 at p. 6-93.
- f) "When the drill emerges at a depth of 45 ft. mud will escape into the marine environment. The drill and the mud pump will be immediately stopped when the break through is made thus limiting the amount entering the marine environment. The mud is heavy and should settle out quickly. The area of mud will be marked and documented and then the mud will be collected through vacuum suction." Section 6.06 at p. 6-62.
- g) "Water samples will be taken at the first emergence and the length of time the material remains in the water column, and the extent of spreading of the material will be noted. The material will then be collected with the use of a suction device. If the material is found to settle out much slower than anticipated or to spread over too wide an area, silt controlling measures will be required." Section 6.12 at p. 6-96.
- h) "To analyze the impact on water quality, samples will be collected at depth 10 ft. from the emergence. The sample will be analyzed for NTU's with the portable NTU meter. Samples will then be taken on an hourly basis until the NTU's return to ambient. (Ambient will be determined by the average of 3 samples taken at the same depth removed from the area of impact.) The extent of the settled plume will be marked and photographed. The area will be cleaned and the area will be re-photosurveyed." Section 6.12 at p. 6-96.
- i) "In the event of any water quality emergency or when NTU's, TSS or secchi disk readings fall outside the allowable limits, the Division of Environmental Protection (DEP) will be immediately notified in person or by phone. Methods

will then be worked out to reduce the sedimentation." Section 6.12 at p. 6-97.

- j) "If at any time the NTU or TSS readings exceed the allowable limits or secchi disk fall below the depths determined by the baseline data for the sea conditions, additional sedimentation and erosion control devices will be implemented. Sedimentation and erosion control devices will have to be improved until such time they allow no increase to turbidity over ambient levels." Section 6.12 at p. 6-95.
- k) "Between 80 and 90 feet [offshore] there is a narrow area of exposed pavement, with scattered hard and soft corals and sponges. The cables will be laid in such a manner to avoid damage to the reef organisms." Section 3.0 at p. 3-3.
- l) "The narrowest area of the deep pavement reef will be marked with buoys during the cable landing procedures, and the cables will be lain through this corridor." Section 6.06 at p. 6-62.

Permitting History for Land Based Development

42. On June 3, 1994, AT&TVI, by cover letter and attached application form, applied to GVI for a Coastal Zone Permit to develop AT&TVI's Cable Landing Facility on Plot #4-A Estate Northside, St. Croix, U.S. Virgin Islands. The application requested, *inter alia*, development of a 16,000 sq. ft. building and a 2000 sq. ft. residence on the uplands. On or about October 5, 1994, AT&TVI, was issued Coastal Zone Permit No. CZX-27-94L.

43. Coastal Zone Permit No. CZX-27-94L, at Section 2, authorizes AT&TVI to develop a cable landing facility at Plot #4A Estate Northside, St. Croix, U.S. Virgin Islands, which includes:

- a) a 16,000 sq. ft., one story 23 ft. high building with a 72,000 gallon cistern;
- b) two 300KW standby generators;

- c) two 6000 gallon underground diesel fuel tanks;
- d) 2,500 sq. ft. single family dwelling;
- e) internal circulation roads, parking spaces, 2 receiving areas, fencing gated entry; and
- f) eight 4" PVC underground conduits to be placed from the landing station to the manhole, including a 250 ft. open cut 4 ft. deep and 3 ft. wide from the manhole to the cable landing station, and three manholes; and a 50 ft. long ground bed north of the splicing manhole with holes drilled below mean low water mark (approximately 60 ft.) for six 8" anodes.

44. Special Condition 6(d) of Permit No. CZX-27-94L states that the water quality monitoring program shall be continued for six months after completion of construction to ensure that all permanent erosion and sediment devices and landscaping are adequate to protect offshore waters.

45. Defendants' Environmental Assessment Report ("EAR"), incorporated by reference in Permit No. CZX-27-94L, states in relevant part:

- a) "To abate potential degradation of water quality of the offshore water, sedimentation and erosion control measures, both temporary and permanent will be implemented." Section 6.05(d) at p. 6-48.
- b) "During the construction phase, erosion control berms and silt fences will be used around all areas with exposed soil. No excavated earth will be stored in areas subject to water runoff and all dirt piles will be bermed or will be surrounded by silt fences." Section 6.05(d) at p. 6-48.
- c) "Silt fences will be placed on the downhill limits of the construction area." Section 6.03c at p. 6-34.
- d) "As a part of the daily inspection of the site by the construction manager, all sedimentation and erosion control features will be checked to make sure they are in place and properly maintained." Section 6.12 at p. 6-94.

- e) "If at any time the NTU or TSS readings exceed the allowable limits or secchi disk fall below the depths determined by the baseline data for the sea conditions, additional sedimentation and erosion control devices will be implemented. Sedimentation and erosion control devices will have to be improved until such time they allow no increase to turbidity over ambient levels." Section 6.12 at 6-95.
- f) "Demolition debris will be collected and hauled to the Anguilla Landfill." Section 5.01 at 5-2.
- g) "All disturbed areas within the construction site shall be stabilized as soon as possible to minimize the erosion of soil. Fill material, and top soil will not be stored in any areas subject to flooding or runoff." Section 5.03A at 5-24.
- h) "Temporary silt fences and settling basins will be placed around all catch basins and culverts during construction." Section 6.03C at 6-34.
- i) "Silt check dams will be placed in the swale to reduce silt transport and shoreline areas will not be disturbed." Section 6.03C at 6-34.
- j) "Shoreline erosion will not be affected by this project." Section 6.03C at 6-35.
- k) "The littoral area will be preserved in its natural condition." Section 6.03C at 6-35.
- l) "[T]he natural shoreline dynamics will not be significantly impacted by the proposed development." Section 6.03C at 6-35.
- m) "A water quality monitoring program will be implemented to monitor the impact of the project on the water quality and marine environment. This program will monitor water quality during the construction activity, monitor sediment control devices and work at implementing solutions to problems as soon as they occur." Section 6.07a at 6-79.

- n) "AT&T will be implementing a stringent sedimentation and erosion control plan." Further, "[t]o ensure that the sedimentation and erosion control devices are adequate, a water quality monitoring program will be instituted and when needed improvements to erosion control devices will be made." Section 6.12 at 6-93.
- o) "In the event of any water quality emergency or when NTU's, TSS, or secchi disk readings fall outside the allowable limits, the Division of Environmental Protection (DEP) will be immediately notified in person or by phone." Section 6.12 at 6-97.

Facts Arising After Permit Issuance - Water Development

46. In accordance with representations made in the EAR, and on behalf of the Permittee AT&TVI, BioImpact prepared a First Monthly Monitoring Report dated December 7, 1995. The monitoring report recited that "[t]he purpose of this program is to help insured (sic) that minimal impacts occur to the marine environment during the cable landing construction and to document any impacts which do occur as a result of the project." The report related only to construction on shore and promised that the monitoring quadrants described in the Water Quality Monitoring Plan "will be established one month prior to the drilling operation." The report assured DPNR that "[t]he purpose of this program is to document any degradation in water quality, or in the health of the benthic community, and detail a course of action that can be immediately implemented to abate that degradation if significant changes are observed." The "Conclusions" section of the report stated "[n]o negative impacts occurred to the marine environment . . . some potential problems did arise but these were quickly resolved prior to any environmental damage."

47. On behalf of the Permittee AT&TVI, BioImpact prepared a Second Monthly Monitoring Report dated January 16, 1995 (sic) and a Third Monthly

Monitoring Report dated February 9, 1996. The Second and Third Monthly Monitoring Reports repeated verbatim the language found in the "Purposes" and "Conclusions" sections contained in the First Monthly Monitoring Report, including typographical errors.

48. Effective March 20, 1996, AT&TSSI and AT&T Corp. entered into a contract with A&L (hereinafter the "Drilling Contract"). Attachment D, Section 4.02 of the Drilling Contract states that: "[t]he Contractor (A&L) will be responsible to directionally drill eight (8) bores using 5.25 inch steel drill pipe and subsequently pulling in 4 inch I.D. PE ducting into the bore from the beach manhole location to a predetermined point about 1000 feet offshore in 45 feet of water."

49. On April 12, 1996, the drilling for the cable conduits started. A&L conducted the physical drilling.

50. From the beginning, A&L had difficulty drilling through the subsurface without drill pipes breaking. In addition, it had difficulty maintaining bore hole integrity in the holes being drilled at the site.

51. From the beginning, drilling protocols used at the site caused mud spills. Among other things, back reaming was used in the drilling process. The back reaming first occurred in the latter part of April, 1996 soon after A&L began drilling.

52. Under the back reaming protocol followed by the Defendants, there was no containment or recirculation of drilling mud. Instead, when back reaming occurred, huge quantities of drilling mud were spewed directly into the water and onto the submerged land. During back reaming of some holes at the site, so much drilling mud was jetted into the environment that divers lost 200 lb. tools in the drilling mud because they were totally covered by the mud. In addition, visibility in the water was obscured.

53. The divers at the site were in constant voice communication with those on the surface. Top-side personnel asked the divers to confirm that mud was flowing and being discharged during the back reaming process. The divers were not advised that these spills were problematic and they were given no instructions to clean up the mud spilled.

54. The drilling mud discharges in April, and during the entire period of drilling operations, were common knowledge among workers and others present at the project site, as well as a common topic of conversation. Moreover, the mud was clearly visible from the water surface. The mud spilled caused significant increases in turbidity that were visible from the surface and obscured the vision of divers in the water. On information and belief, the mud spills were visible from shore.

55. The potential environmental impacts of the drilling was being monitored by BioImpact. Amy Dempsey, BioImpact's President, was at the site frequently during the entire period of drilling operations and dove the site on numerous occasions. She visited the site to monitor, without limitation, the environmental effects of ongoing drilling activities, including back reaming, and activities associated with AT&TVI's land based activities. On information and belief, Amy Dempsey was present in the water at the site during and following the mud spills in April.

56. Divers discussed the drilling mud spilled with BioImpact's President, Amy Dempsey, and A&L personnel.

57. Drilling continued despite significant releases and discharges of mud into the environment. Moreover, Defendants failed to take the steps promised in the EAR in the face of loss of drilling pressure, in that, *inter alia*, they did not per-

form the promised inspections or cleanup nor did they have the required cleanup equipment (vacuum suction) at the site.

58. BioImpact and A&L kept AT&TVI and AT&TSSI apprised of the facts surrounding the drilling operation throughout the period of the project.

59. James Rayot of AT&TSSI was the Project Manager for the drilling operation. Mr. Rayot was stationed in St. Croix. On information and belief, as Project Manager, he was frequently present at the site and was informed by Amy Dempsey and A&L personnel regarding the mud spills during the entire period of the project.

60. AT&TVI and its environmental monitor, BioImpact, had the authority and responsibility to stop drilling in the event that the drilling caused any "release" or "discharge" or "disposal" of drilling mud into the environment.

61. Alex Lowe, President of A&L, visited and dove the site during April and May 1996. On information and belief, Alex Lowe saw the mud that was discharged as a result of his company's drilling protocols. On information and belief, Alex Lowe was kept apprised of the drilling mud spills and the difficulties with maintaining bore hole integrity by A&L employees operating the drilling rig.

62. A&L and Alex Lowe, individually and as President of A&L, had the authority and responsibility to stop drilling in the event that the drilling caused or contributed to a release, discharge, or disposal of drilling mud into the marine environment.

63. AT&TSSI, AT&T Corp., and A&L, the parties to the Drilling Contract, conducted negotiations in April and May, after drilling had begun, to amend the Drilling Contract. They entered into an Amended Drilling Contract dated May 6, 1996 (hereinafter referred to as the "Amended Drilling Contract").

64. AT&TSSI, AT&T Corp., and A&L willfully and intentionally entered into a contract which violated CZM Permit No. CZX-28-94W. Specifically, Attachment D, Section 7.01 of the Amended Drilling Contract, states that: "The Contractor will be given an alternative option to work as outlined in Section 4.02. The alternative option is to directionally bore two 14 inch holes and pull in four schedule 80 PV pipes into each hole for a total of eight pipes. If this option is elected, the two pipe bundles will originate at the same point on the beach and be installed to two points offshore 1000 ft. (305m). These two points offshore will be separated by at least 25 feet but not more than 50 feet at the offshore end."

65. In violation of CZM Permit No. CZX-28-94W, Attachment D, Section 7.02 of the Amended Drilling Contract gives the Contractor the option to drill more holes than the eight allowed under the permit. This provision allowed A&L to drill a 14 inch bore hole and, if this hole failed, to drill 8 more holes with a bore size designated in the original Drilling Contract.

66. In violation of CZM Permit No. CZX-28-94W, the Amended Drilling Contract required A&L to drill a second 14 inch bore hole, if the first 14 inch bore hole proved to be successful. This provision allowed A&L to drill much larger sized holes (14 inches) than the 5.75-inch holes authorized by the Permit.

67. The Sixth Monthly Monitoring Report, prepared in May by BioImpact, Inc. for AT&TVI, notes that "a mechanical failure interrupted drilling for several days. The drilling mud is being well contained and . . . the drillers and the owner's representatives have continued to be responsive to environmental concerns." Later in the Report, it was stated that "[t]he drilling of the conduits has not resulted in the introduction of drilling mud into the environment. Throughout the drilling of the first conduit, drilling mud was lost into the hole, but none emerged into the environment. It is likely that this mud was lost in the many

crevices within the bed rock. . . the drilling mud has not yet broken through . . . No negative impacts occurred during the sixth month (April 1996) of construction on the AT&T site."

68. The Seventh Monthly Monitoring Report also noted that back reaming of the conduit bore hole resulted in "more mud flowing on to the seabed" and a "small volcano of material. . ." had been pushed out of another hole.

69. The Seventh Monthly Monitoring Report, prepared in June by BioImpact for AT&TVI, failed to report the nature and severity of any drill mud spills and claimed "no notable problems with the construction activities this month . . . [and] no negative impacts."

70. By the end of July 1996, two or more emergencies of pipes and associated releases and discharges of drilling mud occurred without immediate reporting. The Eighth Monthly Monitoring Report, dated July 15, 1996 and covering drilling activity in June 1996, documented another release and discharge of drilling mud but alleged that a "minimal amount of mud were (sic) introduced to the sea floor," and that "a large cloud of sand and mud. . ." was created by back reaming that "did not rise higher than a few feet from the bottom . . ." but "everything settled out." The report additionally documented a "small volcano of clippings and sand" with a "small plume of mud [that] flowed out of the volcano cone" and reported that . . . [t]he mud is extremely heavy and only becomes suspended when agitated." The report went on to state that within a week the mud was buried in sand and "no negative impacts from the mud were noted." Despite a documented discharge of material and a duty to vacuum up any mud spills, the AT&T monitor determined that "[i]t does not seem to be necessary to remove the mud from the environment." She prepared this report despite the fact that significant quantities of mud had been spewed into the environment in the June backreaming. So

much mud was discharged that divers could not see and large tools (200 lb.) were buried beneath mud released from the bore hole during back reaming. The divers had to place their tools in a pile, and even use floatation, to ensure that they could find the tools on the seafloor in the deep morass of mud.

71. The Ninth Monthly Monitoring Report, dated August 17, 1996 and covering drilling activity in July 1996, contained indications of similar releases and discharges associated with emergences of the drilling pipe and back reaming of the hole, all followed by assurances that the material had settled out, did not enter the water column, was not suspended absent agitation, was buried by sand in a week, and resulted in no negative impact.

72. By the end of August 1996, at least two more releases and discharges of drilling mud occurred without immediate reporting. The Tenth Monthly Monitoring Report, dated September 16, 1996 and covering drilling in August 1996, describes more releases and discharges resulting in additional out-pouring of drilling mud into the marine environment. This report states "[t]he larger hole drilling did result in the out put of drilling mud into the marine environment" but that it caused "minor impacts." In addition, this report repeats the claims of quick settling and sand burial. The "boring (sic) of some algal species in the mud. . ." was dismissed as "only minor impacts . . ." because the area was "sparsely colonized. . ." The report closed with the litany "[n]o negative impacts. . ."

73. Additional Monthly Monitoring Reports indicate that many emergences of the drilling pipe from the subsurface to the seafloor occurred; at least 14 were recorded. The Monthly Monitoring Reports also indicate that several back reamings (at least four were recorded) occurred between the months of May and Octo-

74. The Defendants failed to notify the DEP immediately by phone or in person of each and every occurrence of the drilling mud entering the marine environment. Moreover, the monthly monitoring reports submitted by AT&TVI and BioImpact minimized the nature and extent of releases and impacts when reported; and never reported others.

75. On information and belief, at the time the Tenth Monthly Monitoring Report was prepared, BioImpact, AT&TVI, AT&T Corp., AT&TSSI, A&L, Alex Lowe, and Barry L. Florence were aware that the drilling mud had killed marine organisms including conch.

76. On or about September 28, 1996, a "frac-out" occurred releasing and discharging at least several thousand gallons of drilling mud to the marine environment.

77. BioImpact sent a memo, dated October 8, 1996, to the Director of Permits describing one drilling mud release and discharge as having "an ovoid shape" and covering an area running 50 feet out to west of the base of the sloped reef. "[T]he mud is extremely heavy and acts as a liquid. It is only when is stirred up that it enters the water column and then it rapidly settles back out in a matter of minutes. . . [P]otential impacts to the coral reef however, do exist if we get a large ground swell before the mud becomes well mixed with the sand or becomes completely buried or colonized."

78. The Eleventh Monthly Monitoring Report, dated October 12, 1996 and covering drilling activity in September 1996, reported that eight conduits were successfully drilled in the month of September. Mud plumes were noted from the two "unfortunate" failed bore holes, that allegedly "quickly resettled out of the water column." It was alleged that Hurricane Hortense "had a tremendous impact on the reef system," and that "the excessive rains. . ." had overtaxed the silt cur-

tains, "and a very large amount of sediment was carried out onto the reef." A "small 'frac-out' of drilling mud . . . at the base of the reef" was documented in this report. After a week of monitoring, cleanup was promised, and no negative environmental impacts were again alleged. "A report on the 'frac-out' and clean up will be forthcoming." Mud plumes were again acknowledged, but settling out in less than an hour was alleged. Exposed mud at the site of a "vent pipe" was noted, and "an assessment of the site will be made and clean-up procedure, if necessary, will follow." These summarily reported plumes and exposed mud were subsequently determined to contain as much as, and possibly more than, 100,000 gallons of drilling mud.

79. On October 18, 1996, an inspection by DPNR staff scientists of the AT&T Drilling Site revealed, among other things, the following:

- a) No vacuum suction siltation device was present at the drill site.
- b) Silt curtains were not in the vertical position as required but were flattened and therefore not properly installed or maintained.
- c) On the sea bottom in the area where the drill head emerged ("emergence zone") there was a layer of drill mud with a thickness of 2-5 inches that covered the sand. The mud was heavy and dense, and smothered the bottom.
- d) In an area south of the emergence zone, DPNR inspectors observed approximately two queen conch, *strombus gigas*, ninety-one (91) milk conch, *strombus costatus*, and one flame helmet, *cassis flammea*, trapped in the drill mud. Sixty-five of the milk conch were observed to be dead. "[S]everal conch were observed attempting to extricate themselves from mud, yet unable to do so," revealing that the mud was "definitely having a negative environmental impact." Moreover, the inspector observed that if brushed with a hand or fin the mud "immediately became suspended in the water column as a milky solution."

- e) A DPNR inspector observed that the mud covered the sand on an average of approximately 2-5 inches of depth; however, some areas were probed to a depth of 1.5 to 2 feet. DPNR inspectors observed that the mud felt oily and slippery to the touch. DPNR's investigation revealed that the drill mud was not present at the site prior to the commencement of the drilling.

80. By letter dated October 28, 1996, the Commissioner of DPNR notified AT&TVI that an inspection of the AT&T Cable Landing Facility "revealed that throughout the drilling of the conduits, a large volume of mud had escaped or was dumped on the sea floor" and as a result "conditions of the water quality certificate and the CZM permit ha[d] been violated." The Commissioner's letter ordered AT&TVI "to Cease all work activity" pertaining to Permit No. CZX-28-94W until further notice. In addition, the Commissioner's letter notified AT&TVI of DPNR's intention to proceed with further investigation and the preparation of an "Order for Corrective Action."

81. Under cover letter dated October 29, 1996, BioImpact submitted a cleanup plan, entitled "Mud Disposal Plan", for the mud at the "frac-out" area and the mud located at the emergence zone.

82. The day after, on October 30, 1996, Amy Dempsey faxed a letter to Gerville Larsen, Director of Permits, DPNR, stating that samples taken at the drill site on September 28, 1996 exceed the limits established in the CZM permit. She stated that the sample taken below the culvert had an NTU value of 87.

83. DPNR rejected BioImpact's Mud Disposal Plan because, among other reasons, it lacked a full assessment of the impacted sites, failed to address terrestrial concerns, and proposed methods that would result in further violations.

84. By letter dated November 4, 1996, the CZM Committee transmitted a "Notice of Violation; Amended Cease and Desist Order; and Order for Remedial

Action and Order Setting Hearing Date," Action No. CZX-74-1996, ordering AT&TVI to cease all development activities under Permit Nos. CZX-27-94L and CZX-28-94W at Plot #4A Estate Northside, St. Croix, except as authorized by an approved Remedial Action Plan, and until the Committee acknowledged in writing that AT&TVI corrected the violations to the Committee's and DPNR's satisfaction. The CZM Committee ordered AT&TVI to submit to DPNR its plans for a series of activities related to the assessment of the releases into the environment and their cleanup. The required plan included, but was not limited to, ". . . a Remedial Action Plan for effective erosion and drainage controls at the project site" and "a complete site assessment" including at a minimum:

- a) an accurate, documented determination of the size of the area impacted with the drill mud and the quantity of the material to be recovered.
- b) an analysis of the impact of the mud on the marine environment and a material assessment.
- c) the name, address . . . of the contractor experienced in underwater drilling operations.
- d) a detailed description and discussion of all potential methodologies for mud removal and their potential impacts to the environment.

85. Under cover letters dated November 12 and 13, 1996, AT&TVI submitted documents entitled an Erosion and Drainage Control Plan and A Site Assessment of Drilling Mud to the DPNR, allegedly in response to the November Order.

86. AT&TVI and A&L used tens of thousands of pounds of drilling mud in their drilling operation. None of this mud was properly disposed of in a landfill. All, or virtually all, of the drilling mud was disposed of through releases and discharges into the marine environment. Among other things, back reaming of

holes resulted in huge discharges of drilling mud directly into the marine environment and disposal of this mud on the submerged lands.

87. On information and belief, AT&TVI and A&L drilled a larger number of holes than they were allowed by Permit CZX-28-94W. A&L informed AT&TVI of the progress of its drilling operations throughout the period that it was drilling.

88. The drilling mud used by A&L and owned by AT&TVI contained a material called bentonite.

89. On information and belief, the drilling mud was dosed with oil and hazardous waste and hazardous substances. Grab samples taken of the drilling mud on the sea floor revealed the presence of benzo[a]pyrene and benzo[k]fluoranthene. The samples also showed the presence of Polynuclear Aromatic Hydrocarbons ("PAHs").

90. More detailed sampling, conducted by Order of DPNR in September 1997, confirmed the presence in the drilling mud of PAHs, including the following that are listed by the United States Environmental Protection Agency ("EPA") as Priority Pollutants:

- a) naphthalene
- b) phenanthrene
- c) fluoranthene
- d) pyrene
- e) benz(a)anthracene
- f) chrysene
- g) benzo(a)pyrene

91. Notwithstanding the facts above, AT&TVI has falsely stated in administrative investigatory proceedings that the drilling mud contained only bentonite

and sea water. In addition, AT&TVI has made materially misleading statements regarding the composition of the drilling mud to the Territorial Court of the Virgin Islands in judicial proceedings.

92. The drilling mud released and discharged into the environment, among other things, was and is killing different varieties of conch, several of which are commercially harvested.

Facts Arising After Permit Issuance - Land Development

93. According to the First Monthly Monitoring Report prepared for AT&T, dated December 7, 1995, at p. 1: "[E]arth clearing began on the AT&T site the week of October 23, 1995. During this week vegetation was removed and piled within the lot. At this time the silt screens were not yet in place."

94. According to the Architect's Field Report dated November 10, 1995, attached to the First Monthly Monitoring Report prepared for AT&T, dated December 7, 1995: "The construction area is being cleared, but the Erosion & [sic] Sedimentation Control plan has not been implemented. This must be done immediately before earthwork continues. As a condition of the permit the erosion and sedimentation control shall be in place prior to any earth disturbance."

95. According to the Architect's Field Report dated November 11, 1995, attached to the First Monthly Monitoring Report prepared for AT&T, dated December 7, 1995: "The earth change work continued without any implementation of the erosion & [sic] sedimentation Control Plan. There was no supervisory personnel present on the site at the time of the visit." Further, "[i]t is imperative that the erosion and sedimentation control be implemented prior to additional earth disturbance."

96. According to the Second Monthly Monitoring Report prepared for AT&T, mistakenly dated January 16, 1995, instead of January 16, 1996, at p. 4: "It is imperative that the silt fences be maintained on a continuing basis. It was surprising to see the wear on the curtains less than a month after they were put in place."

97. According to the Ninth Monthly Monitoring Report prepared for AT&T, dated August 17, 1996, the drilling site is "extremely muddy."

98. According to the Ninth Monthly Monitoring Report prepared for AT&T, dated August 17, 1996, at p. 2: "It has become almost impossible to keep all the silt screens in place."

99. An October 18, 1996 inspection by DPNR staff scientists of the AT&T Drilling Site at Plot #4A Estate Northside, St. Croix, revealed the following CZM land permit violations:

- a) stock piles of what appeared to be concrete aggregate on the seaward side of the property;
- b) these stock piles were not covered and were subject to runoff during rain events into the near shore marine environment;
- c) evidence of sediment runoff into the water was observed;
- d) the two permit approved culverts were not installed according to plans;
- e) the culverts were not functioning as a sediment control device; and
- f) silt curtains were not in the vertical position as required but were flattened and therefore not properly installed or maintained.

100. Additional marine and terrestrial inspections on October 25, 1996 and October 29, 1996 revealed the following:

- a) that the culverts were not functioning as a sediment control device; and
- b) that stock piles on the seaward side were still uncovered and still leaching into the marine environment.

101. According to the Eleventh Monthly Monitoring Report prepared for AT&T, dated October 12, 1996, at p. 3, 4: "[t]he silt control devices were unable to contain the flow and a very large amount of sediment was carried out into the reef. . . Sponges and coral were literally covered with the fines in most areas." Further, "a very large amount of soil from the site was carried into the sea."

Cable Laying Acts and Omissions

102. On April 10, 1997, the Territorial Court of the Virgin Islands, Judge Alphonso G. Andrews, Jr., entered a Consent Order ("Consent Order") allowing AT&TVI to lay fiber optic cable "within the northern corridor," provided that disturbance of the benthic community would be limited to: "the tolerance limits established by the Environmental Assessment Report ("EAR") accompanying AT&T's CZM Permit No. CZX-28-94W" and "one meter on either side of the cable as it is laid."

103. Under the terms of the Consent Order, AT&TVI's cable laying was subject to the following additional conditions: AT&TVI was "required to have an environmental monitor present during the laying of the cable;" AT&TVI was required to "conduct a quantitative benthic survey of the corridor where the cable [was] to be laid" on April 11, 1997, prior to cable laying; and AT&TVI was to "provide DPNR the site survey of the corridor exhibited in Court, which depict[ed] where the cable [was] to be placed, along with a boat and diving equipment for DPNR to conduct its own independent review of the area." In addition, under the

terms of the Consent Order, DPNR was entitled to "have an environmental monitor present" during the laying of cable.

104. The Consent Order expressly provided and granted both the DPNR environmental monitor and the AT&TVI monitor authority to "order the cable laying stopped" and to decide on an "appropriate course of action" in situations where cable laying outside the corridor would result in damage, when cable laying inside of the corridor exceeded the established limits, or upon the discovery of any emergence of bentonite drilling mud in the vicinity of the opening of Bore Hole No. 5 or any new emergence at the "frac-out" area.

105. On April 11, 1997, the Parties to the Consent Order met and viewed the agreed upon corridor for the cable laying operations.

106. On April 14, 1997, during the cable laying operation in Butler Bay on St. Croix, AT&TVI improperly placed its marker buoys such that cable laying would occur outside of the northern corridor and directly on the coral reef in violation of both the terms and provisions of the Consent Order and the agreed-upon cable laying corridor identified by the Parties to the Consent Order on Friday, April 11, 1997. Shortly after the start of a tow through the northern corridor entrance, it became obvious to the DPNR representative that the corridor marked was at 80 feet, a depth which was too deep. The improper depth was verified by depth finder and communicated to the AT&TVI monitor. The DPNR representative told the AT&TVI monitor that unless the cable was placed shallower than 60 feet it would impact the reef community. The AT&TVI monitor acknowledged and agreed with the determination of the DPNR representative regarding the problematic corridor location. The AT&TVI monitor, in turn, notified the DPNR environmental monitor that the route was too deep, the cable would impact the reef, and the route was not the corridor agreed upon on April 11, 1997. The DPNR repre-

sentative, DPNR environmental monitor, and the AT&TVI monitor then agreed that the "appropriate course of action" would be for AT&TVI to relocate and remark the corridor with buoys to reflect the proper route and avoid the reef, and that the Parties would verify the correction with a tow. They communicated their decision to the AT&TVI representative, Mr. Francis.

107. AT&TVI intentionally and blatantly disregarded the agreed upon "appropriate course of action" directed by the DPNR environmental monitor, the DPNR representative, and AT&TVI's own monitor to correct and relocate the buoy placement so that the cable would be placed along the northern corridor and would not damage the coral reef as mandated by the Consent Order. AT&TVI did not relocate the markers to delineate the correct corridor along the 45-foot contour and, instead, began cable laying operations. In disregarding the "appropriate course of action" directed by the monitors, AT&TVI intentionally violated the terms of the Consent Order.

108. In response to the commencement of cable laying activities outside the agreed upon corridor, the DPNR environmental monitor issued a Stop Work Order to stop the damaging cable laying until the proper route was marked and approved by both monitors. The DPNR representative advised the AT&TVI Shoremaster and also an AT&TVI agent on the cable laying vessel, via VHF radio, of the order to stop all cable laying.

109. AT&TVI intentionally and repeatedly disregarded the Stop Work Orders issued by the on site DPNR environmental monitor to prevent cable laying damage outside the corridor and to prevent unauthorized impacts exceeding the one meter limit on either side of the cable. The DPNR representative contacted the AT&TVI Shoremaster on VHF Channel 67 and advised him of the Stop Work Order. The AT&TVI Shoremaster replied that Channel 67 was AT&TVI's work-

ing frequency, that they were in the middle of an operation, that he was "too busy" to talk, and that the DPNR representative should try contacting the cable laying vessel on Channel 16. The DPNR representative next contacted the cable laying vessel on Channel 16 and advised an unidentified AT&TVI agent of the Stop Work Order. Based on the sound of the voice, the DPNR representative concluded that he was speaking to Bill Francis, the AT&TVI representative. The speaker insisted, however, that the AT&TVI representative was "busy" with the Captain and that the cable laying vessel could not stop. The AT&TVI agent told the DPNR representative that he should come pick up Mr. Francis. The DPNR representative responded that he could not leave his station. The AT&TVI agent then stated that Mr. Francis was on his way with a new course plot map. Throughout this entire time period, AT&TVI was already laying cable outside the corridor in violation of the repeated Stop Work Orders.

110. Shortly thereafter, AT&TVI intentionally disregarded another determination of "an appropriate course of action" agreed upon by the on site DPNR environmental monitor and the AT&TVI monitor. Both monitors directed that AT&TVI proceed only if the cable laying occurred along the 45-foot depth contour and away from the coral reef. In direct contradiction to the earlier Stop Work Orders, the "appropriate course of action" directives, and the advice of the on site DPNR environmental monitor, AT&TVI continued to lay cable outside of the northern corridor and directly on the coral reef in violation of the Consent Order.

111. During an underwater survey on April 14, 1997, shortly after the cable laying operation, the DPNR environmental monitor observed at least three sets of marks, caused by the cable being lifted, moved, and dropped again, confirming cable activity well outside the 2 meter corridor and in violation of the Consent Order.

112. During the unauthorized cable laying activities on April 14, 1997, both the DPNR environmental monitor and the AT&TVI monitor confirmed that AT&TVI had not followed the agreed upon corridor and as a result damage to the reef had occurred.

113. AT&TVI's unauthorized cable laying outside the northern corridor irreparably damaged the reef and reef organisms along a minimum of 60 meters, including various soft corals (*e.g.*, "a particular gorgonian") and at least one scleractinean coral.

114. In discussions with the DPNR environmental monitor and the DPNR representative, the AT&TVI monitor confirmed damage to the reef. On the basis of his inspection of a portion of the reef, the AT&TVI monitor stated that the cable laying had impacted the reef seaward of the drill mud discharge area and that the Virgin Islands Government should seek recovery for this injury. The AT&TVI monitor had prepared a list of the species impacted by the cable laying based on his quick visual assessment and indicated that he would prepare a report of the impacts that would be available to the DPNR.

COUNT I - CERCLA

115. Plaintiffs incorporate by reference paragraphs 1 through 114 of this Complaint.

116. Samples taken of the drilling mud that was released by Defendants onto the sea floor confirm the presence of benzo[a]pyrene and benzo[k]flouranthene. Both benzo[a]pyrene and benzo[k]flouranthene are "hazardous substances" within the meaning of CERCLA.

117. The drilling mud discharged into the environment contains hazardous substances.

118. The cable laying buildings, the bore holes connected to them, and the drilling mud remaining on the ocean floor, as well as the locations where hazardous substances have come to be located, constitute a "facility" within the meaning of 42 U.S.C. §9601 (hereinafter the "Hazardous Waste Site").

119. "Hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14), have been released into the environment from the Hazardous Waste Site.

120. Moreover, there remains a continuing threat of release as well as continuing releases of hazardous substances from the Hazardous Waste Site.

121. Each Defendant is an "owner" and/or "operator" of the Hazardous Waste Site as these terms are used in 42 U.S.C. §9607.

122. Barry L. Florence is an "operator" within the meaning of 42 U.S.C. §9607 because he was at all relevant times the President and Chief Executive Officer of AT&TVI. He had the authority and responsibility to ensure that the operations associated with the drilling and construction of the AT&TVI project, including cable laying, complied with Territorial and Federal environmental laws. He had the authority and responsibility to stop and/or modify all operations and activities associated with the drilling and construction of the AT&TVI project, including cable laying at the site. On information and belief, Mr. Florence had knowledge of the permit conditions and problems at the site. Mr. Florence visited the site.

123. AT&TVI and AT&T Corp. are current "owners" and/or "operators" because, among other things, they currently own and operate the drilling mud spilled, as well as the bore holes, and the shore-side cable laying facility connected to the bore holes. By letter of their counsel, AT&TVI has claimed ownership of the drilling mud that was released into the environment. AT&TVI is in fact the owner of such mud. In addition, AT&TVI is the Permittee under CZX-28-94W.