UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of: **Total Petroleum Puerto Rico Corp.** Respondent Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928	**COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. RCRA-02-2018-7101

COMPLAINT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901-6991 (together hereafter the "Act" or "RCRA"), for injunctive relief and the assessment of civil penalties. The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling and management of hazardous waste at 40 C.F.R. Parts 260-273 and 279.

This "COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING" ("Complaint") serves notice of EPA's preliminary determination that Total Petroleum Puerto Rico Corp. violated provisions of RCRA and federal regulations concerning the management of hazardous waste and universal waste at its terminals located in Carolina and Guaynabo, Puerto Rico; and in St. Thomas, U.S. Virgin Islands.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the Administrator of EPA may, if certain criteria are met, authorize a state to operate a "hazardous waste program" (within the meaning of Section 3006 of the Act, 42 U.S.C. § 6926) in lieu of the federal hazardous waste program. The Commonwealth of Puerto Rico and the Government of the U.S. Virgin Islands are "State[s]" as that term is defined by Section 1004(31) of the Act, 42 U.S.C. § 6903(31). However, the Commonwealth of Puerto Rico and the

Respondent's Background

1. The Respondent is Total Petroleum Puerto Rico Corp. (hereinafter the "Respondent" or "Total").

2. Respondent is a for-profit corporation organized under the laws of the Commonwealth of Puerto Rico, and is a wholly owned subsidiary of Total Marketing Services of France. Respondent is engaged in the wholesale distribution of petroleum products, including gasoline for gas stations and aviation fuel supply for airports in Puerto Rico and the USVI.

3. Respondent is and has been at all times relevant a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.

4. To the best of EPA's knowledge, Respondent operates one (1) petroleum-derived products terminal, the Total Petroleum St. Thomas Terminal (hereinafter "St. Thomas Terminal"), and approximately three (3) service stations in St. Thomas, U.S. Virgin Islands.

5. The St. Thomas Terminal is located in the cargo area of the Cyril E. King St. Thomas Airport, at Charlotte Amalie.

6. To the best of EPA's knowledge, Respondent operates two (2) petroleum-derived products terminals and approximately two hundred and ten (210) service stations in Puerto Rico.

7. Respondent's petroleum-derived product terminals in Puerto Rico are: Total Petroleum Guaynabo Bulk Terminal (hereinafter "Guaynabo Terminal") and Total Petroleum Puerto Rico Luis Muñoz Marín Airport Terminal (hereinafter "SJU Terminal").

8. The Guaynabo Terminal is located in Road PR-28, Km. 0.8, Pueblo Viejo Ward, in the Municipality of Guaynabo, Puerto Rico

9. The SJU Terminal is located in the cargo area of the Luis Muñoz Marín International Airport, in the Municipality of Carolina, Puerto Rico.

10. The North American Industry Classification System Code applicable to Total's terminals is 424710, which applies to facilities primarily engaged in the merchant wholesale distribution of crude petroleum and petroleum products, including liquefied petroleum gas.

11. Each one of Respondent's petroleum-derived product terminals is a "facility," within the meaning of 40 C.F.R. § 260.10.

12. Respondent is and has been at all times relevant the "operator" of the petroleum-derived product terminals (hereinafter "Terminals" or "Facilities") described in paragraphs 10 through 14, as that term is defined in 40 C.F.R. § 260.10.

13. Respondent is and has been at all times relevant a "generator" of "hazardous waste" and a "handler" of "universal waste" as those terms are defined in 40 C.F.R §§ 260.10 and 273.9.

14. On or about July 6, 1995, the St. Thomas Terminal submitted its *Notification of Hazardous Waste Activity* as a small quantity generator of hazardous waste.

15. In response to the St. Thomas Terminal's *Notification of Hazardous Waste Activity*, EPA assigned the St. Thomas Facility EPA Identification Number: VIR000000042.

16. On March 5, 2012, Respondent submitted the Biennial Report for the St. Thomas Terminal and updated its generator status to large quantity generator.

17. On or about April 6, 1981, the Guaynabo Terminal provided its *Notification of Hazardous Waste Activity* as a small quantity generator of hazardous waste.

18. In response to the Guaynabo Terminal's *Notification of Hazardous Waste Activity*, EPA assigned the Guaynabo Facility EPA Identification Number: PRD980536007.

19. On August 16, 2004, Respondent updated the Guaynabo Terminal's generator status to large quantity generator.

20. On March 1, 2016, submitted the Biennial Report for the Guaynabo Terminal.

21. On or about April 6, 1981, the SJU Terminal provided its Notification of Hazardous Waste Activity as a small quantity generator of hazardous waste.

22. In response to SJU Terminal's *Notification of Hazardous Waste Activity*, EPA assigned the SJU Facility EPA Identification Number: PRD980536023.

23. On February 27, 2014, Respondent submitted its Biennial Report and updated the Facility's generator status to large quantity generator.

24. On February 29, 2016, Respondent resubmitted the Biennial Report for the SJU Terminal.

EPA INVESTIGATIVE ACTIVITIES

St. Thomas Terminal

25. On August 20, 2015, an EPA Inspector conducted a Compliance Evaluation Inspection of the St. Thomas Terminal pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (hereinafter the "St. Thomas Inspection").

26. At the time of the St. Thomas Inspection, the EPA Inspector was first greeted by Mr. Francisco Maldonado, Terminal Manager (hereinafter "St. Thomas Terminal Manager") and was later introduced to Mr. Iván Pérez, Deputy Terminal Operations Manager (hereinafter "St. Thomas Operations Manager").

27. During the St. Thomas Inspection, the St. Thomas Operations Manager indicated that during the normal course of operations the terminal stores petroleum derived fuels such as gasoline, diesel, and jet fuel in aboveground storage tanks ("AST").

28. During the St. Thomas Inspection, the St. Thomas Operations Manager escorted the EPA Inspector to the following areas: the Oil/Water Separator Unit, the Slop Oil Tank, and the Hazardous Waste Accumulation Area.

<u>Oil/Water Separator Unit</u>

29. During the St. Thomas Inspection, approximately eight (8) unidentified 55-gallon metal containers were observed adjacent to the Oil/Water Separator Unit.

30. According to the St. Thomas Operations Manager, these eight (8) containers adjacent to the Oil/Water Separator Unit were accumulating "contact water" derived from the cleaning operations of the Oil/Water Separator Unit.

Slop Oil Tank

31. As part of the St. Thomas Inspection, the EPA Inspector inspected the Slop Oil Tank, an 8,000-gallon aboveground metal storage tank.

32. During the St. Thomas Inspection, the EPA Inspector observed that the Slop Oil Tank did not have any signage or identifications.

33. During the St. Thomas Inspection, the EPA Inspector observed that the Slop Oil Tank has a secondary containment structure.

34. During the St. Thomas Inspection, the St. Thomas Operations Manager indicated that the Slop Oil Tank was used to accumulate "contact water."

35. According to the St. Thomas Operations Manager, the Slop Oil Tank was not receiving additional "waste" at the time because it had reached its operational storage capacity of 6,000 gallons.

36. According to the St. Thomas Operations Manager, the Slop Oil Tank also receives waste derived from the maintenance and cleaning operations of the fuel ASTs.

37. According to the St. Thomas Operations Manager, at the time of the St. Thomas Inspection, the Slop Oil Tank was storing wastes derived from the Oil/Water Separator Unit and from the fuel ASTs.

Hazardous Waste Accumulation Area

38. As part of the St. Thomas Inspection, the Facility's Hazardous Waste Accumulation Area was found to be storing hazardous and non-hazardous waste in 55-gallon containers without maintaining the necessary aisle space to allow the unobstructed movement of personnel and equipment.

39. During the St. Thomas Inspection, the EPA Inspector found that at least fifteen (15) 55-gallon containers were labeled as hazardous waste, but "accumulation start dates" were not legible on the containers.

40. During the St. Thomas Inspection, the EPA Inspector found that three of the 55-gallon hazardous waste containers were open.

41. During the St. Thomas Inspection, the EPA Inspector found that two of the 55-gallon hazardous waste containers were showing advanced signs of deterioration (*i.e.* corrosion).

42. According to the St. Thomas Operations Manager, the fifteen (15) hazardous waste containers described in paragraph 43 had been stored there since at least 2014.

Request for Documents

43. During the St. Thomas Inspection, the EPA Inspector requested the following documents: hazardous waste manifests for years 2013, 2014 and 2015; training records; contingency plan, and a copy of the 2014 biennial report.

44. During the St. Thomas Inspection, the EPA Inspector conducted a review of the hazardous waste management records available at the Facility. However, neither the 2014 Biennial Report nor the hazardous waste manifests for years 2013, 2014 or 2015 were available for review.

45. During the St. Thomas Inspection, the St. Thomas Operations Manager contacted Total's Health, Safety and Environmental Quality ("HSEQ") Manager, Ms. Polauris Vázquez (hereinafter "HSEQ Manager"), via phone to inquire about the missing documents and to request help in locating these.

46. The hazardous waste manifests for years 2013, 2014 and 2015, the contingency plan, and a copy of the 2014 biennial report were not shown to the EPA Inspector by Respondent during or after the St. Thomas Inspection. The Respondent was unable to provide a justification for the unavailability of such documents.

47. Upon EPA's request, St. Thomas Operations Manager and St. Thomas General Manager agreed to submit the information within thirty (30) days.

48. On August 28, 2015, EPA sent an email to the Respondent as a reminder of the request for documents made during the St. Thomas Inspection.

49. In the August 28, 2015 email, the EPA Inspector restated EPA's request for the submittal of the following information: hazardous waste determination on the Slop Oil Tank's content and the wastes generated at the Oil/Water Separator Unit; manifests evidencing the disposal of the hazardous waste containers stored in the Hazardous Waste Accumulation Area; contingency plan or revised version of the Facility Response Plan; evidence of used oil recycling/used oil filters recycling disposal; and St. Thomas procedures to manage universal and electronic waste.

50. On September 15, 2015, Respondent requested a 30-day extension to submit the requested information.

51. On October 2, 2015, EPA granted the extension.

52. On October 29, 2015, Respondent hand-delivered its Response, which was used to evaluate the compliance status of the Facility with the regulations that govern large quantity generators of hazardous waste (hereinafter the "Response").

53. In its Response, Respondent addressed EPA's inquiry regarding the Slop Oil Tank's contents by stating the following: "Samples were collected by Virgin Islands Regulated Waste Management Inc. and shipped to an external laboratory. Samples results are not available yet. Please, find evidence of the communication between Terminal representatives and contractors. Also, find a copy of the sampling event chain of custody."

54. As part of its Response, Respondent provided a copy of Section 3, Hazard Identification and Evaluation, of the St. Thomas Terminal's Facility Response Plan. According to Respondent, Section 3 of the Facility Response Plan includes the "relevant information equivalent to the RCRA Contingency Plan."

55. Upon review of the information, EPA concluded that Respondent failed to include the following information:

    a. agreement letter/notification to local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 265.37;

b. list with names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 265.55). This list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates;

c. a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), and where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities; and

d. an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

56. In Attachment 4 of the Response, Respondent included the *Total Company Rule: Waste Management* ("Total Internal Rule"), effective December 2013. According to the Total Internal Rule, the following waste streams are to be managed as hazardous wastes: hydrocarbon sludge (separator, bottom of tank, purge, Slop Oils, etc.); water-hydrocarbon mixtures; wastes oils (engine or industrial); hazardous chemicals; contaminated earth or absorbents (contaminated by hydrocarbon or other hazardous products); packaging soiled by hazardous products (lead, etc.); oil or fuel filters; neon; aerosols; batteries containing: mercury (button cells), lead, nickel, cadmium; asbestos; tar; manufacturing unit cleaning waste; and waste electrical and electronic equipment.

Meeting at Total's Office

57. On April 26, 2016, EPA held a meeting with Respondent at its Main Office in Guaynabo to discuss matters related to another RCRA inspection (of the SJU Terminal, described below).

58. During the meeting, EPA Inspectors discussed and requested information on the analytical results of the St. Thomas's Slop Oil Tank's samples.

59. Total's HSEQ Manager, Ms. Polauris Vázquez, replied that St. Thomas's Slop Oil Tank's samples were determined to be hazardous waste.

Guaynabo Terminal

60. On March 17, 2016, EPA's Inspectors conducted a Compliance Evaluation Inspection of the Guaynabo Terminal pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (hereinafter the "Guaynabo Inspection").

61. At the time of the Guaynabo Inspection, EPA Inspectors met Ms. Vivian Suárez, Bulk Terminal Manager (hereinafter "Guaynabo Manager").

Red Dye Tank

62. During the Guaynabo Inspection, EPA Inspectors observed that the Guaynabo Terminal had an ongoing release of a liquid substance from a 550-gallon tank to its secondary containment unit.

63. The liquid substance was identified by the Guaynabo Manager as "Red Dye."

64. At the time of the Guaynabo Inspection, EPA Inspectors observed that absorbent material had been placed to control and clean up the spill derived from a leaking pipeline containing "Red Dye."

65. According to the Guaynabo Manager, absorbent materials used to control the "Red Dye" spill were replaced and removed each Friday and disposed of as hazardous waste.

Hazardous Waste Accumulation Area

66. At the time of the Guaynabo Inspection, EPA Inspectors observed at least forty-one (41) 55-gallon containers of hazardous waste at the Hazardous Waste Accumulation Area without clear or legible markings indicating their accumulation start dates.

67. In addition, EPA Inspectors observed that three (3) of the forty-one (41) 55-gallon containers of hazardous waste at the Hazardous Waste Accumulation Area (Hazardous Waste Accumulation Area) exhibited signs of deterioration *(i.e.* corrosion).

68. During the inspection of the Hazardous Waste Accumulation Area, EPA Inspectors noticed that the access through the containers was limited due to the lack of aisle space.

69. During the Guaynabo Inspection, no fire suppressant equipment (*i.e.* fire extinguishers or automatic sprinkler system) or spill control equipment were observed within or near the Hazardous Waste Accumulation Area.

Document Review

70. During the Guaynabo Inspection, EPA Inspectors requested evidence on the arrangements made by Respondent to familiarize first responders with the layout of the Guaynabo Terminal, properties of hazardous waste handled at the Guaynabo Terminal and associated hazards, places where the Terminal's personnel would be normally working, entrances to roads within the terminal, and possible evacuation routes.

71. Respondent was not able to provide evidence of the arrangements made with police, fire departments and emergency response teams.

SJU Terminal

72. On April 22, 2016, EPA Inspectors conducted a Compliance Evaluation Inspection of the SJU Terminal pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 (hereinafter the "SJU Inspection").

73. At the time of the SJU Inspection, EPA Inspectors met Mr. Pedro Rodríguez, Terminal Supervisor, who assisted and accompanied EPA's Inspectors in lieu of Mr. Héctor Sánchez, Terminal Manager, who was not available at the time.

74. During the SJU Inspection, EPA Inspectors conducted a walkthrough of the following areas: Mechanical Shop and Slop Oil Tank.

Mechanical Shop

75. During the SJU Inspection, EPA Inspectors observed at least forty (40) spent fluorescent lamps stored in the Mechanical Shop.

76. During the SJU Inspection, EPA Inspectors observed that the fluorescent lamps were not labeled. In addition, broken fluorescent lamps residues (*i.e.* glass fragments) were also observed on the floor.

77. During the SJU Inspection, EPA Inspectors found that the spent fluorescent lamps had been accumulated for approximately forty-five days.

78. The containers with spent fluorescent lamps did not prevent breakage nor were identified as "Universal Waste-Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s). *See* 40 C.F.R. § 273.14(e)

Slop Oil Tank Area

79. During the SJU Inspection, EPA Inspectors inspected the Slop Oil Tank, a 14,000-gallon above ground storage tank provided with a secondary containment unit.

80. According to the SJU Supervisor, the Slop Oil Tank was emptied two weeks before the SJU Inspection.

Request for Documents

81. During the SJU Inspection, the following RCRA related records were requested during the opening meeting: 2016 Biennial Report; weekly inspection reports; Waste Minimization Plan; Contingency Plan; job's positions descriptions; hazardous waste manifests for years 2013, 2014 and 2015; and evidence of annual training and supporting documents on RCRA Air Emissions applicability determinations. However, none of these documents were available or accessible at the time of the SJU Inspection.

82. During the SJU Inspection, the SJU Supervisor contacted the HSEQ Manager, via conference call, to request her support locating and/or addressing the information requested by EPA's Inspectors.

83. In Response, the HSEQ Manager explained that the Terminal Manager was the custodian of the SJU Terminal's records and requested a follow-up meeting with EPA to provide the requested documents and to discuss the findings of the SJU Inspection.

Follow-up Meeting

84. On April 26, 2016, a meeting (hereinafter "Follow-up Meeting") was held at Respondent's office in Guaynabo, Puerto Rico.

85. Respondent was represented at the Follow-up Meeting by the HSEQ Manager, Ms. Vázquez, and the SJU Terminal Manager, Mr. Sánchez (hereinafter "Total's Representatives").

86. During the Follow-up Meeting, Total's Representatives provided the following documents pertaining to the SJU Terminal for EPA's review: cover sheet of the 2016 Biennial Report; weekly inspection reports; Waste Minimization Plan; Facility Response Plan (in lieu of Contingency Plan); the job position descriptions for "operations manager" and "aviation manager;" two non-hazardous waste manifests from 2014 and 2015; and "contact water" off-site transport records from 2016.

87. During the Follow-up meeting, Total's Representatives indicated that "contact water" accumulated in the Slop Oil Tank was disposed as non-hazardous waste at an industrial landfill in Puerto Rico.

88. Total's Representatives identified Vieques Environmental, Inc., as the transporter of the "contact water" disposed of as non-hazardous waste.

89. Total's Representatives further stated during the Follow-up Meeting that light non aqueous phase liquids of the SJU Terminal Slop Oil Tank was sold to third parties.

90. During the Follow-up Meeting, EPA Inspectors requested further information on these sale transactions (*i.e.* invoices), but Respondent did not provide supporting documents on this matter.

91. During the Follow-up Meeting, the following information or documents were not provided as had been previously agreed: hazardous waste determination on "contact water" and Slop Oil Tank's contents; and a description of actions taken to address the management and disposal of the "spent fluorescent lamps" found at the Mechanical Shop of the SJU Terminal.

92. During the Follow-up meeting, Total's Representatives committed to submit the requested information by May 20, 2016.

93. On April 28, 2016, EPA sent Respondent an electronic communication to reiterate its document request.

94. On June 14, 2016, Respondent hand-delivered the following documents pertaining to the SJU Terminal: EPA Form 8700-12; Hazardous Waste Minimization Plan (2014); Facility Response Plan; Spill Prevention and Countermeasure Plan; universal waste disposal manifests; Slop Oil Tank contents characterization; and "contact water" hazardous waste determination.

95. According to Respondent's EPA Form 8700-12, which was submitted as a component of the Hazardous Waste Report (Biennial Report 2016), the SJU Terminal was conducting hazardous waste activities as a Large Quantity Generator (generates 1,000 Kg/month of hazardous waste in any calendar year) and listed two waste codes to describe the hazardous waste streams generated.[1]

96. Respondent's Hazardous Waste Minimization Plan for SJU Terminal indicates that the Facility generates wastes that fall under the following two major hazardous waste categories: sludge from tank maintenance operations and spill response material. In addition, the Facility generates Universal Waste (i.e. discarded fluorescent light bulbs).

97. Respondent's Facility's Response Plan for SJU Terminal, describes the Terminal as follows: "The facility has nine (9) aboveground storage tanks in service; four are used to store jet fuel; one for aviation gasoline, one Slop Oil Tank, one gasoline storage tank, one emergency generator fuel tank storage tank and one emergency generator day tank(...)The Slop Oil tank is used to collect any hose drippings and, oil residues and/or spilled materials(...)The facility is enclosed by a curb and ditch system that contains and routes storm water flows to the Plant storm water trench. The storm water

[1] However, in the comments section of the Form 8700-12, Total stated the following "This Facility does not generate, in any calendar month 1,000 kg/mo (2,200 lbs/mo) or more of hazardous waste; or generates, in any calendar month, or accumulates at any time, more than 100kg/mo (220lbs/mo) of acute hazardous spill cleanup material in the period corresponding for the preparation of this report. For this reason, we are not submitting GM and/or OI forms."

sewer trench discharges to an Oil/Water Separator Unit (oil/water separator) (...) the Oil/Water Separator Unit has a valve that can divert the flow to the Slop Oil Tank. Oil collected in this tank will be removed by a vacuum truck for proper disposal."

98. According to Respondent, SJU Terminal Slop Oil Tank's solid phase is a "material" that has been sold to and used by an asphalt company in Puerto Rico. However, evidence of such transactions was not provided during the Follow-up meeting nor included in the SJU Response.

COUNT 1
Failure to Make Hazardous Waste Determination

99. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "98," inclusive, as if fully set forth herein.

100. Pursuant to 40 C.F.R. § 261.2(b), "materials" are solid waste if they are abandoned by being disposed of; or burned or incinerated; or accumulated, stored or treated before in lieu or being abandoned by being disposed of, burned, or incinerated; or sham recycled.

101. Pursuant to 40 C.F.R. § 261.2(e), "materials" are not solid wastes when they can be shown to be recycled by being: used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or used or reused as effective substitutes for commercial products; or returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land.

102. Pursuant to 40 C.F.R. § 261.2 (f), respondents in actions to enforce regulations implementing subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

103. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste.

104. Prior to, at least, April 22, 2016, Respondent generated the following waste streams at the SJU Terminal:

    a. hydrocarbons and water mixtures (*i.e.* Slop Oil Tank's non-aqueous phase and dissolved phase liquids); and

    b. sludge derived from fuels tanks' bottoms (*i.e.* Slop Oil Tank's solid phase).

105. On or about April 26, 2016, Respondent claimed that the abovementioned waste streams were materials. However, Respondent failed to provide appropriate documentation to support its claims, as required by 40 C.F.R. § 261.2(f).

106. Each of the waste streams identified in paragraph "104" are "solid waste," as defined in 40 C.F.R. § 261.2.

107. Prior to, at least, April 22, 2016, Respondent failed to make a hazardous waste determination for the waste streams described in paragraph "104."

108. Respondent's failure to make a hazardous waste determination for the waste streams described in paragraph "104," constitutes a violation of 40 C.F.R. § 262.11.

109. Respondent's claim that certain materials are not solid waste, without providing the appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, constitutes a violation of 40 C.F.R. § 262.11.

110. Respondent's failure to comply with 40 C.F.R. § 262.11 subjects it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 2
Operation of Hazardous Waste Storage Facilities without a RCRA Permit

111. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "98," inclusive, as if fully set forth herein.

112. Respondent has been a generator of hazardous waste as defined in 40 C.F.R. § 260.10, for its activities conducted at the St. Thomas Terminal since at least July 6, 1995.

113. Respondent has been a generator of hazardous waste as defined in 40 C.F.R. § 260.10, for its activities conducted at the Guaynabo Terminal since at least April 6, 1981.

114. Pursuant to 40 C.F.R. § 262.34(a), a generator who generates more than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that:

    a. The waste is placed:

        i. in containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 C.F.R Part 265; and/or

        ii. in tanks and the generator complies with the applicable requirements of subparts J, AA, BB, CC of 40 C.F.R. part 265.

    b. the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

    c. while being accumulated on-site, each container and tank is labeled or marked with the words "Hazardous Waste."

115. Pursuant to Section 3005 of RCRA, 42 U.S.C. §6925, the operation of a hazardous waste treatment, storage or disposal facility without a permit is prohibited.

116. Pursuant to 40 C.F.R. § 262.34(b), a generator of 1,000 kilograms of greater hazardous waste in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of the 40 C.F.R. §§ 264, 265, and 267 and the permit requirements of 40 C.F.R. Part 270 unless an extension has been granted.

117. Pursuant to 40 C.F.R. 270.1(c) a permit is required for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 40 C.F.R. Part 261. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit.

118. At the time of the St. Thomas Inspection (August 20, 2015), Respondent was storing hazardous waste in one (1) 8,000-gallon AST, the St. Thomas Terminal's Slop Oil Tank, and in at least fifteen (15) 55-gallon containers, in the Hazardous Waste Accumulation Area, none of which were marked with nor had visible for inspection their respective "accumulation start dates."

119. Prior to at least August 20, 2015, Respondent placed and stored "Hazardous Waste" in the St. Thomas Terminal's Slop Oil Tank, which was not labeled or marked with the words "Hazardous Waste."

120. As of at least August 20, 2015, Respondent stored hazardous waste for more than 90 days at the St. Thomas Terminal's Slop Oil Tank and Hazardous Waste Accumulation Area.

121. As of at least August 20, 2015, Respondent had not requested from the Regional Administrator an extension to accumulate hazardous waste in containers or tanks beyond the 90-day period at its St. Thomas Terminal.

122. At the time of the Guaynabo Inspection (March 17, 2016), Respondent was storing hazardous waste in at least forty-one (41) 55-gallon containers, in the Hazardous Waste Accumulation Area, none of which were clearly or legibly marked with their respective "accumulation start dates."

123. As of at least March 17, 2016, Respondent stored hazardous waste for more than 90 days at the Guaynabo Terminal.

124. As of at least March 17, 2016, Respondent had not requested from the Regional Administrator an extension to accumulate hazardous waste in containers or tanks beyond the 90-day period at its Guaynabo Terminal.

125. Respondent's hazardous waste storage activities at two of its terminals, St. Thomas and Guaynabo, without having a permit (interim status), constitute a violation of Section 3005 of RCRA and 40 C.F.R. § 270.1(c).

126. Respondent's failure to comply with Section 3005 of RCRA and 40 C.F.R. § 270.1(c) subjects it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 3
Failure to Minimize Risk

127. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "98," inclusive, as if fully set forth herein.

128. Pursuant to 40 C.F.R. § 264.31 and 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health of the environment.

129. Pursuant to 40 C.F.R. §§ 264.32(c) and 265.32(c), facilities must be equipped with portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment.

130. Pursuant to 40 C.F.R. §§ 264.35 and 265.35, facilities must maintain aisle space to allow the unobstructed movement or personnel, fire protection equipment, spill control equipment, and decontamination equipment.

131. Pursuant to 40 C.F.R. § 264.37 and 265.37, the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations: (a) to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes, and (b) where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority. In addition, the owner or operators must attempt to make agreements with State emergency response teams, emergency response contractors, and equipment suppliers, and arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility. Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

132. As of at least March 17, 2016, Respondent failed to repair a damaged component of the "Red Dye" tank at the Guaynabo Terminal, allowing an unplanned release of hazardous waste.

133. As of at least August 20, 2015, Respondent failed to maintain aisle space in the Hazardous Waste Accumulation Area at the St. Thomas Terminal.

134. As of at least March 17, 2016, Respondent failed to maintain aisle space in the Hazardous Waste Accumulation Area at the Guaynabo Terminal.

135. As of at least March 17, 2016, Respondent failed to equip the Hazardous Waste Accumulation Area at the Guaynabo Terminal with portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment.

136. As of at least March 17, 2016, Respondent failed to document the arrangements made to familiarize first responders and hospital(s) with the type of wastes that are generated and handled at the Guaynabo Terminal and with the emergency procedures that have been developed for each one of the hazardous wastes generated.

137. As of at least October 29, 2015, Respondent failed to make arrangements to familiarize first responders and hospital(s) with the types of waste and with the emergency procedures that have been developed for each one of the types of waste generated at the St. Thomas Terminal.

138. Respondent's failures to: control hazardous waste spills; equip its Hazardous Waste Accumulation Areas with fire control, spill control and decontamination equipment; maintain aisle space; and make arrangements with first responders on the emergency procedures for the St. Thomas and Guaynabo Terminals constitute violations of 40 C.F.R. §§ 265.31 - 265.37.

139. Respondent's failures to comply with 40 C.F.R. §§ 265.31 - 265.37 subject it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 4
Failure to Have Proper Contingency Plan or to Incorporate Hazardous Waste Management Provisions into Facility Response Plan ("One Plan")

140. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "98," inclusive, as if fully set forth herein.

141. Pursuant to 40 C.F.R. §§ 264. 51 and 265.51, each owner or operator must have a contingency plan for his facility. Pursuant to 40 C.F.R. §§ 264.52 and 265.52, the contingency plan must describe the actions facility personnel must take to comply with 40 C.F.R. §§ 265.51 and 265.56 (or equivalent regulations in Part 264) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Part 112, or some other emergency or contingency plan, he needs only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan").

142. As of at least August 20, 2015 and March 17, 2016, Respondent failed to incorporate hazardous waste management provisions into the Facility Response Plans prepared for the St. Thomas and SJU Terminals, respectively.

143. Respondent's failure to include hazardous waste management provisions in the Facility Response Plans for the St. Thomas Terminal and SJU Terminals constitute a violation of 40 C.F.R. § 265.52.

144. Respondent's failure to comply with 40 C.F.R. § 265.52 subjects it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 5
Failure to Maintain Containers with Hazardous Waste Closed and in Good Condition

145. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "98," inclusive, as if fully set forth herein.

146. Pursuant to 40 C.F.R. §§ 264.173 (a) and (b) and 265.173 (a) and (b), hazardous waste containers must always be closed during storage, except when it is necessary to add or remove waste; and a container holding hazardous waste must not be opened, handled or stored in a manner which may rupture the container or cause it to leak. Pursuant to 40 C.F.R. §§ 264.171 and 265.171 if a container holding hazardous waste is not in good condition, the owner or operator must transfer the waste to a container that is in good condition or manage the waste in another complaint manner.

147. At the time of the St. Thomas Inspection, Respondent stored hazardous waste in at least four (4) open 55-gallon containers at its St. Thomas Terminal.

148. At the time of the St. Thomas Inspection, Respondent stored hazardous waste in at least two (2) extremely corroded 55-gallon metal containers at its St. Thomas Terminal.

149. At the time of the Guaynabo Inspection, Respondent stored hazardous waste in at least four (4) 55-gallon metal containers exhibiting signs of advanced corrosion at its Guaynabo Terminal.

150. Respondent's failure to maintain hazardous waste containers closed and in good conditions, are violations of 40 C.F.R. §§ 264.171 and 264.173 or 265.171 and 265.173.

151. Respondent's failure to comply with 40 C.F.R. §§ 264.171 and 264.173 and 265.171 and 265.173 subjects it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

COUNT 6
Failure to Comply with Universal Waste Management Requirements

152. Complainant repeats and re-alleges each allegation contained in paragraphs "1" through "98," inclusive, as if fully set forth herein.

153. Pursuant to 40 C.F.R §§ 273.13(d)(1) and (2), a small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

    a. lamps must be contained in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions; and

    b. any lamp that is broken must immediately be cleaned up and placed in a container and any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment must be placed in a container. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

154. Pursuant to 40 C.F.R. § 273.14, each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

155. Pursuant to 40 C.F.R. § 273.17, a small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

156. Prior to the SJU Inspection, Respondent generated and accumulated "universal waste lamps" (i.e. spent fluorescent lamps) at its SJU Terminal, and became an "universal waste handler" as that term is defined in 40 C.F.R § 273.9(a)(1).

157. At the time of the SJU Inspection, Respondent failed to accumulate "spent fluorescent lamps" (i.e. universal waste lamps) in structurally sound container(s) or package(s) adequate to prevent breakage. Instead, Respondent accumulated "universal waste lamps" side-by-side throughout the Mechanical Shop at the SJU Terminal.

158. At the time of the SJU Inspection, Respondent failed to clean up residues of broken universal waste lamps.

159. At the time of the SJU Inspection, Respondent stated that the universal waste lamps had been accumulated for approximately forty-five days.

160. Respondent's failures to comply with the requirements set forth in 40 C.F.R. §§ 273.13, 273.14 and 273.17 constitute a violation of the Standards for Small Quantity Handlers of Universal Waste.

161. Respondent's failure to comply with 40 C.F.R. §§ 273.13, 273.14 and 273.17 subjects it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

I. PROPOSED CIVIL PENALTY

The Complainant proposes, subject to the receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:
Total Proposed Penalty is **$543,203.85**

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA to "take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case and used EPA's 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: http://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf. This 2003 RCRA Civil Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalty Inflation Adjustment Act of 1990, as amended through 2015 ("Inflation Adjustment Act"), 28 U.S.C. § 246, required EPA to adjust its penalties for inflation on a periodic basis. Consistent with this, the penalty amounts in the 2003 RCRA Civil Penalty policy have been and will continue to be amended to reflect inflation adjustments. The adjustments relevant to this case have been made pursuant to the following: (a) the memorandum entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation" (applicable to violations that occurred between December 7, 2013 and November 2, 2015); and (b) the July 27, 2016 document entitled "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation" (applicable to violations that occurred after November 2, 2015). Pursuant to the Inflation Adjustment Act, the maximum statutory civil penalty under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), is $37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015; and $97,229 per day for each violation occurring after November 2, 2015(where the penalty is assessed on or after January 15, 2018). *See* 40 C.F.R. Part 19 and 82 Fed. Reg. 3633 (January 10, 2018).

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that Respondent be assessed the aforementioned civil penalty for the violations alleged in

this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint is included in Attachment I, below.

II. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of the Act, 42 U.S.C. § 6928, Complainant herewith issues the following Compliance Order to the Respondent, which shall take effect (*i.e.*, the effective date) thirty (30) days after service of this Order, unless by that date Respondent has requested a hearing pursuant to 40 C.F.R. § 22.15. *See*, 42 U.S.C. § 6928(b) and 40 C.F.R. §§ 22.37(b) and 22.7(c):

1. Within sixty (60) calendar days of the effective date of this Compliance Order, if it has not already done so, Respondent shall make the hazardous waste determination of each individual waste stream before placing in tanks and/or containers.

2. Respondent shall either ("a" or "b"):

    a. submit, within ninety (90) calendar days of the effective date of this Compliance Order, a Part B permit application to the United States Environmental Protection Agency for hazardous waste permits for one or more of its Facilities and shall comply with all applicable rules and regulations and take steps, including, but not limited to those set out in paragraphs "3 "through "7" below, until it obtains such permits;

    or,

    b. comply with all conditions necessary to be exempt from hazardous waste permitting requirements at the Facilities. These conditions (which vary according to the type and quantity of hazardous waste generated and accumulated) include, but are not limited to pre-transport requirements (e.g. hazardous waste labeling, accumulation marking).

3. Within ten (10) calendar days of the effective date of this Compliance Order, Respondent shall:

    a. make sure that all containers with hazardous waste are properly marked and labeled with the accumulation start date and the words "Hazardous Waste;" and

    b. conduct weekly inspections of areas in which hazardous wastes are being accumulated and perform corrective actions as needed (i.e. replace corroded containers, maintain aisle space).

4. Within thirty (30) calendar days of the effective date of this Compliance Order, if it has not already done so, Respondent shall equip all Hazardous Waste Accumulation Areas at Total's facilities with fire control equipment, spill control equipment and decontamination equipment.

5. Within thirty (30) calendar days of the effective date of this Compliance Order, if it has not already done so, Respondent shall inspect and replace any defective parts or ancillary equipment (i.e. pipeline, elbow, valves) of the Red Dye Tank at the Guaynabo Terminal for leaks or parts prone to leakage.

6. Within thirty (30) calendar days of the effective date of this Compliance Order, if it has not already done so, Respondent shall legally dispose of all hazardous waste containers stored in the Hazardous Waste Accumulation Area of the Guaynabo Terminal.

7. Within thirty (30) calendar days of the effective date of this Compliance Order, Respondent shall update the Facility Response Plan of all Total's Terminals in Puerto Rico and USVI to include provisions to comply with the Contingency Plan requirements set forth in 40 C.F.R. §§ 262.261 and 262.262.

8. Respondent shall submit a compliance certification within ninety (90) calendar days of the effective date of this Compliance Order along with any appropriate supporting documentation. If Respondent is in noncompliance with an ordered provision, the certification shall state the reasons for noncompliance and shall provide a schedule to bring its Facilities into compliance.

9. All responses, documentation, and evidence submitted in response to this Compliance Order should be sent to:

Zolymar Luna
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
Response & Remediation Branch
City View Plaza II, suite 7000
#48 Road PR-165, km 1.2
Guaynabo, PR 00968-8069
787-977-5844
luna.zolymar@epa.gov

10. Compliance with the provisions of this Compliance Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all other applicable RCRA statutory or regulatory (federal and/or local) provisions, nor does such compliance release Respondent from liability for any violations at the Facilities. In addition, nothing herein waives, prejudices or otherwise affects EPA's right to enforce any applicable provision of law, and to seek and obtain any appropriate penalty or remedy under any such law, regarding Respondent's generation, handling and/or management of hazardous waste at the Facilities.

III. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), and the Inflation Adjustment Act, a violator failing to take corrective action within the time specified in a compliance order that has taken effect is liable for a civil penalty of up to $58,562 for each day of continued noncompliance. See 40 C.F.R. Parts 19 and 83 Fed. Reg. 1190 (January 10, 2018). (codified at 40 C.F.R. Part 19) Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator by EPA.

IV. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS,"

("CROP") and which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint and can also be found at: https://www.epa.gov/alj/rules-practice-proceedings-administrative-law-judges.

Upon receipt of a compliance order issued under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent may seek administrative review in accordance with 40 C.F.R. Part 22. The Respondent may seek judicial review of the compliance order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, once it is final and reviewable pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. Part 22.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty and/or the Compliance Order is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint (40 C.F.R. §§ 22.15(a) and 22.7(c)). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor - Room 1631,
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and the Assistant Regional Counsel mentioned in Section V below and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b).

The Answer shall also set forth: 1) the circumstances or arguments that are alleged to constitute the grounds of defense, 2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and 3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer(s) facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request A Hearing

If requested by Respondent, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Inspector (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c). With regard to the Compliance Order in the Complaint, unless Respondent requests a hearing pursuant to 40 C.F.R. § 22.15 within thirty (30) days after the Compliance Order is served, the Compliance Order shall automatically become final. 40 C.F.R. § 22.37.

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation (40 C.F.R. § 22.15(d)). If Respondent fails to file a timely (i.e. in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion (40 C.F.R. § 22.17(a)). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations (40 C.F.R. § 22.17(a)). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c) as set forth in 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Inspector for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB"; *see* 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (30) days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the forty-five (45) day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

V. INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in the Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Carolina Jordán-García, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
Office of Regional Counsel-Caribbean Team
City View Plaza 2, Suite 7000, #48 PR-165 km 1.2
Guaynabo, PR 00968-8069
(787) 977-5834
jordan-garcia.carolina@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). By accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VI. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

If, instead of filing an Answer, Respondent wishes not to contest the Compliance Order in the Complaint and wants to pay the total amount of the proposed penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified in Section V.

COMPLAINANT:

Carmen R. Guerrero-Pérez, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2

Date: MARCH 22 | 2018

To: Mr. Pierre-Emmanuel Bredin
General Director
Total Petroleum Puerto Rico Corp.
P.O. Box 362916,
San Juan, PR 00936-2916

cc: Ms. Polauris Vázquez Alfonso
HSEQ Manager
Total Petroleum Puerto Rico Corp.
Via email: poluaris.vazquez@tpprc.com

Hon. Dawn Henry
Commissioner
Department of Planning and Natural Resources
45 Mars Mills
Frederiksted, St. Croix, VI 00841

Hon. Tania Vázquez
Chairwoman
PR Environmental Quality Board
P.O. Box 11488
San Juan, PR 00910

bcc: Teresita Rodríguez (2CEPD-RRB)
David Cuevas
Héctor Vélez (2ORC)
William K. Sawyer (2ORC-WTSB)
Zolymar Luna (2CEPD-RRB)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of: **Total Petroleum Puerto Rico Corp.** Respondent Proceeding under Section 3008 of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6928	**COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING** Docket No. RCRA-02-2018-7101

CERTIFICATE OF SERVICE

This is to certify that on the day of_____, I caused to be mailed a true and correct copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, bearing Docket Number RCRA-02-2018-7101, by certified mail, return receipt requested, to:

Mr. Pierre-Emmanuel Bredin
General Director
Total Petroleum of Puerto Rico Corp.
P.O. 362916
San Juan, PR 00936-4754

The original and one copy of the Complaint was filed, by certified mail, return receipt requested, with:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2,
290 Broadway, 16th floor,
New York, New York 10007-1866.

Dated: _____

ORC-CT, Guaynabo, Puerto Rico