

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TX

**FILED**  
12 MAR 24 PM 04:39  
REGIONAL HEARING CLERK  
EPA REGION 6

IN THE MATTER OF: §  
§  
§  
TotalEnergies Petrochemicals & Refining § Consent Agreement and Final Order  
USA Inc. § USEPA Docket No. RCRA-06-2024-0928  
§  
RESPONDENT §  
§

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**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, TotalEnergies Petrochemicals & Refining USA Inc. ("Respondent" or "TotalEnergies") and concerns the Carville Polystyrene Plant located at 6225 LA-75, Carville, LA 70721 ("the TotalEnergies Facility").
2. Notice of this action has been given to the State of Louisiana, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. Respondent explicitly waives any right to contest the allegations or to appeal the proposed final order contained in this CAFO and waives all defenses that have been raised or could have been raised to the claim set forth in the CAFO.
5. Respondent and Complainant, by the execution and filing of this CAFO, have agreed to resolve only those violations and claims which are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.
7. By their signatures to this CAFO, the Parties agree to the use of electronic signatures for this matter.

## **II. JURISDICTION**

8. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
9. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is a petrochemical and refining company authorized to do business in the State of Louisiana.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and Title 33 of the Louisiana Administrative Code ("LAC") LAC 33: V.109<sup>1</sup>, [40 C.F.R. § 260.10].
12. Respondent owns or operates the TotalEnergies Facility.
13. The TotalEnergies Facility produces polystyrene by continuous polymerization of styrene monomer in liquid phase reactor systems.
14. Pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, the EPA conducted an inspection from March 6 to March 9, 2023, to determine Respondent's compliance with RCRA and the implementing regulations at the TotalEnergies Facility (the "Inspection").
15. During the Inspection, EPA discovered that Respondent, at a minimum, generated and offered for transport and treatment, hazardous waste streams with one or more of the following characteristics:
  - A. Ignitability: D001 (Ignitability)

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<sup>1</sup> On January 24, 1985, the State of Louisiana received final authorization for its base Hazardous Waste Management Program (50 FR 3348). Subsequent revisions have been made to the Louisiana Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated November 2015, incorporated by reference under 40 C.F.R. § 272. 951(c)(1)(i) effective on December 26, 2018. 83 Fed. Reg. 66143 (December 26, 2018); 40 C.F.R. 272. 951: Louisiana State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Louisiana Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Louisiana's published version. The corresponding C.F.R. citations are also provided.

- B. Toxicity: D009 (Mercury); D035 (Methyl ethyl ketone); D039 (Tetrachloroethylene); D040 (Trichloroethylene)
  - C. Discarded Solvent Wastes: F001; F002; F003; F005.
  - D. Discarded Commercial Chemical Products: U080 (Methylene chloride)
16. The TotalEnergies Facility is a "facility" within the meaning of LAC 33: V.109, [40 C.F.R. § 260.10].
  17. The waste streams identified in Paragraph 15 are "hazardous waste" as defined in LAC 33: V.4901.B & F, 4903.B, and 4903.E [40 C.F.R. §§ 261.21, 261.24, 261.31, and 261.33].
  18. From the Inspection, EPA determined that Respondent generated the hazardous waste streams identified in Paragraph 14 in quantities that exceeded the threshold amount of 1,000 kilograms and operated as a "Large Quantity Generator" of hazardous waste as defined under LAC 33: V.109, [40 C.F.R. Part 262], for the periods that such wastes remained onsite.
  19. Respondent is a "generator" of "hazardous waste" as those terms are defined in LAC 33: V.109, [40 C.F.R. § 260.10].
  20. As a generator of hazardous waste, Respondent is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in Title 33 of LAC Part V, Chapter 1-51, [40 C.F.R Part 262 and/or 270].
  21. EPA submitted to Respondent on August 15, 2023, a Notice of Potential Violation and Opportunity to Confer. In a conference call on October 10, 2023, EPA conferred with the Respondent regarding the violations alleged therein and provided an opportunity for

Respondent to submit additional information and materials, which Respondent did on October 30, 2023.

#### IV. CLAIMS

**Claim 1. Failure to close #23-063 H.C. Filter container.**

22. The allegations in Paragraphs 1-21 are realleged and incorporated by reference.
23. Pursuant to LAC 33: V:2107.A and 40 C.F.R. § 262.17(a)(1)(iv)(A), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
24. During the Inspection, EPA identified a drum labeled “#23-063 H.C. Filter” in the satellite accumulation area incapable of closing and containing hazardous waste. Respondent replaced the damaged latching lid on the container and modified the container to improve the sealing capability.
25. At all times relevant to this CAFO, Respondent failed to close a container in violation of LAC 33: V.2107.A and 40 C.F.R. § 262.17(a)(1)(iv)(A).

**Claim 2. Failure to maintain/operate a facility to minimize a release of hazardous waste.**

26. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
27. Pursuant to LAC 33: V:1511.B and 40 C.F.R. § 264.31, facilities must be designed, constructed, 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 or the environment.

28. During the Inspection, EPA determined that spills in Line 5, Line 3, Tank 19-B, and Line 4 Steam Out Pad are managed as hazardous waste based on process knowledge and waste determination but were not promptly cleaned up in a timely manner. Respondent took measures to address the materials identified, including employing mechanical cleaning.
29. At all times relevant to this CAFO, Respondent failed to maintain and operate its facility 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 or the environment, in violation of LAC 33: V:1511.B and 40 C.F.R. § 264.31.

**Claim 3. Failure to distribute a contingency plan to local emergency responders.**

30. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
31. Pursuant to LAC 33: V:1513.C.2 and 40 C.F.R. § 264.53(b), a copy of the contingency plan and all revisions to the plan must be maintained at the facility and additional copies must be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
32. During the Inspection, Respondent was not able to locate a record confirming that it submitted its most recent contingency plan to the local emergency planning committee. Respondent addressed this issue on March 29, 2023, by providing an electronic copy of the plan.
33. At all times relevant to this CAFO, Respondent failed to distribute its contingency plan to all local emergency responders in violation of LAC 33: V:1513.C.2 and 40 C.F.R. § 264.53(b).

**Claim 4. Failure to identify the list of emergency coordinators.**

34. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
35. Pursuant to LAC 33: V:1513.B.4 and 40 C.F.R. § 264.52(d), the contingency plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 264.55), and this list must be kept up to date. When 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.
36. During the Inspection, Respondent was unable to identify the list of emergency coordinators in its contingency plan. Respondent amended the contingency plan to clearly identify the emergency coordinators and their contact information and re-submitted the plan.
37. At all times relevant to this CAFO, Respondent failed to identify the list of emergency coordinators in its contingency plan in violation of LAC 33: V:1513.B.4 and 40 C.F.R. § 264.52(d).

**Claim 5. Failure to close aerosol can container.**

38. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
39. Pursuant to LAC 33: V.2107 and 40 C.F.R. § 262.17(a)(1)(iv)(a), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
40. During the Inspection, EPA determined that the Respondent failed to store aerosol cans in a container that was closed. TotalEnergies added a satellite accumulation area to the Paint Shed for aerosol cans and training was provided to affected personnel.

41. At all times relevant to this CAFO, Respondent failed to store aerosol cans in a container that was closed in violation of LAC 33: V.2107 and 40 C.F.R. § 262.17(a)(1)(iv)(a).

**Claim 6. Failure to label or mark aerosol can container clearly.**

42. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
43. Pursuant to LAC 33:V:1109.E.4 and 40 C.F.R. § 262.17(a)(5), a generator may accumulate as much as 55 gallons of hazardous waste listed in LAC 33:V.4901.B, C, D, F, or LAC 33:V.4903, or one quart of acutely hazardous waste listed in LAC 33:V.4901.E in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Paragraph E.1 or 7 of this Section provided he complies with LAC 33:V.2103, 2105, 2107.A and marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
44. During the Inspection, EPA determined that the Respondent failed to label or mark the aerosol can container clearly. Respondent subsequently labeled all containers in this area.
45. At all times relevant to this CAFO, Respondent failed to label or mark the aerosol can container clearly in violation of LAC 33: V:1109.E.4 and 40 C.F.R. § 262.17(a)(5).

**Claim 7. Failure to make a complete waste determination.**

46. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
47. Pursuant to LAC 33:V.1103 and 40 C.F.R. § 262.11, a person who generates a solid waste, as defined in LAC 33:V.109, must determine if that waste is a hazard.



48. During the Inspection, EPA determined that the Respondent failed to make a complete waste determination. Respondent updated the aerosol can waste profile to include D003 and a copy was provided to EPA shortly after the inspection.
49. At all times relevant to this CAFO, Respondent failed to make a complete waste determination in violation of LAC 33:V.1103 and 40 C.F.R. § 262.11.

**Claim 8. Failure to manage paint residue as hazardous waste.**

50. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
51. Pursuant to LAC 33:V.109 and 40 C.F.R. § 261.7(a)(2), any hazardous waste in either of the following is subject to regulation under LAC 33:V.Chapters 1-38, 41, 43, 49, or to the notification requirements of LAC 33:V.105.A: a container that is not empty; or an inner liner removed from a container that is not empty, as defined in Paragraph 2 of this definition.
52. During the Inspection, EPA identified five cans of waste paint being drained to dry out. Respondent explained that this process of drying out the cans included disposing the paint into the spent paint thinner drum and then letting the contents drip into other cans until dried out. Afterwards, Respondent would dispose of the dried-out cans into the scrap metal drum. The paint residues needed to remain in RCRA empty containers in order to meet the LAC 33:V.109 and 40 C.F.R. § 261.7(a)(1) exemption.
53. Respondent retrained the maintenance contractor responsible for maintaining the painting area and site management on paint waste management. The Paint Shed area is now included in the environmental weekly inspection program and Respondent updated annual training to further clarify expectations for contractors.

54. At all times relevant to this CAFO, Respondent failed to manage the paint residue as hazardous waste and was therefore in violation of the applicable requirements identified in LAC 33.V.109 and 40 C.F.R. § 261.7(a)(2).

**Claim 9. Failure to close spent thinner and waste paint containers.**

55. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
56. Pursuant to LAC 33:V.2107.A and 40 C.F.R. § 262.17(a)(1)(iv)(A), a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
57. During the Inspection, EPA identified containers of spent thinner and waste paint that were not closed. Respondent removed the containers at issue from the area.
58. At all times relevant to this CAFO, Respondent failed to close containers in violation of LAC 33:V.2107.A and 40 C.F.R. § 262.17(a)(1)(iv)(A).

**Claim 10. Failure to label or mark spent thinner and waste paint containers.**

59. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
60. Pursuant to LAC 33:V:1109.E.4 and 40 C.F.R. § 262.17(a)(5), a generator may accumulate as much as 55 gallons of hazardous waste listed in LAC 33:V.4901.B, C, D, F, or LAC 33:V.4903, or one quart of acutely hazardous waste listed in LAC 33:V.4901.E in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Paragraph E.1 or 7 of this Section provided he complies with LAC 33:V.2103, 2105, 2107.A and marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

61. During the Inspection, EPA identified containers of spent thinner and waste paint unlabeled. Respondent subsequently labeled all containers in the area.
62. At all times relevant to this CAFO, Respondent failed to label containers in violation of LAC 33:V:1109.E.4 and 40 C.F.R. § 262.17(a)(5).

**Claim 11. Failure to determine average volatile organic (VO) concentration of a hazardous waste.**

63. The allegations in Paragraph 1-21 are realleged and incorporated by reference.
64. Pursuant to LAC 33:V.1753.A.1 and 40 C.F.R. § 265.1084(a)(1), an owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of LAC 33:V.1751.C.1 from using air emission controls in accordance with standards specified in LAC 33:V.4727, as applicable to the waste management unit.
65. During the Inspection, EPA determined that the Respondent failed to document its determination of the average volatile organic (VO) concentration of a hazardous waste at the point of waste origination. Respondent subsequently updated the applicable waste profiles to include the applicable determination.
66. At all times relevant to this CAFO, Respondent failed to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination in violation of LAC 33:V.1753.A.1 and 40 C.F.R. § 265.1084(a)(1).

**V. COMPLIANCE ORDER**

67. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within 90 calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams at the TotalEnergies Facility to determine the accurate waste codes and has developed and implemented processes to ensure that Respondent is operating the TotalEnergies Facility in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, processes, best practices, and training concerning: (a) making hazardous waste determinations; (b) handling hazardous wastes; (c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests; and (e) meeting the requirements of the land disposal requirements;
  - B. Respondent shall certify that it has accurately and adequately complied with its RCRA Section 3010 notification for the TotalEnergies Facility and within the prescribed time period in Section 3010; and
  - C. Respondent shall provide, with its certification, a description of Respondent's processes, best practices, and training as described in subparagraph A above.
68. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:
- "I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on

my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6  
Enforcement and Compliance Assurance Division (ECAD)  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102  
ATTN: Elizabeth Pham

Where possible, notice shall be sent electronically by email to Enforcement Officer Elizabeth Pham, respectively at pham.elizabeth@epa.gov or at 214-665-8354.

## VI. TERMS OF SETTLEMENT

### A. Penalty Provisions

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of **forty eight thousand one hundred eight dollars and eighty cents (\$48,108.80)**.
70. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
71. The following are Respondent's options for transmitting the penalties: Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

Wire Transfer:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

The case name and docket number (In the Matter of TotalEnergies Petrochemicals & Refining USA Inc., Docket No. RCRA-06-2024-0928 shall be clearly documented on or within the chosen method of payment to ensure proper credit.

72. The Respondent shall send a simultaneous notice of such payment to the following:

U.S. EPA, Region 6  
Enforcement and Compliance Assurance Division (ECAD)  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102  
ATTN: Elizabeth Pham

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

73. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within

thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

74. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

#### **B. Costs**

75. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

#### **C. Termination and Satisfaction**

76. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification

language set forth in Section IV (Compliance Order), Paragraph 68. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

**D. Effective Date of Settlement**

77. This CAFO shall become effective upon filing with the Regional Hearing Clerk.



TotalEnergies Petrochemicals & Refining USA Inc.  
RCRA-06-2024-0928

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

Date: 3 / 12 / 2024



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TotalEnergies Petrochemicals & Refining USA Inc.

FOR THE COMPLAINANT:

Date: March 12, 2024

\_\_\_\_\_  
Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

**FINAL ORDER**

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: \_\_\_\_\_

\_\_\_\_\_

Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant, EPA:

george.elizabeth.a@epa.gov

Copy via Email to Respondent:

lauren.rucinski@keanmiller.com  
TotalEnergies Petrochemicals & Refining USA Inc.  
PO Box 98  
Carville, LA 70721

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Regional Hearing Clerk  
U.S. EPA, Region 6