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	**CONSENT AGREEMENT AND FINAL ORDER** Docket No. RCRA-02-2018-7101

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint referenced herein on April 26, 2018, against Total Petroleum Puerto Rico Corp. ("Respondent"); and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

PRELIMINARY STATEMENT

1. This civil administrative proceeding was 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, 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

2. The Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

3. The Respondent is Total Petroleum Puerto Rico Corp., ("Respondent"). Respondent operates: one (1) petroleum-derived products terminal, the Total Petroleum St. Thomas Terminal (hereinafter "St. Thomas Terminal"), in St. Thomas, U.S. Virgin Islands, and two (2) petroleum-derived products terminals in Puerto Rico. 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 "LMM Terminal").

4. Under 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 ("Puerto Rico") and the Government of the U.S. Virgin Islands are "State[s]" within the meaning of this provision. However, Puerto Rico and the Government of the U.S. Virgin Islands are not authorized by EPA to conduct hazardous waste management programs under Section 3006 of RCRA, 42 U.S.C. § 6926. Therefore, EPA retains primary responsibility for requirements promulgated pursuant to RCRA. As a result, all requirements in 40 C.F.R. Parts 260 through 268 and 270 through 279 relating to hazardous waste are in effect in Puerto Rico and the U.S. Virgin Islands, and EPA has the authority to implement and enforce these regulations.

5. The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on April 26, 2018. The Complaint alleged that Respondent failed to comply with RCRA and hazardous waste regulations at its terminals. Complainant and Respondent conducted settlement negotiations which led to this agreement.

6. Complainant and Respondent agree, by entering into this CA/FO, that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

7. This CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns.

8. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states claims upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this CA/FO.

9. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

10. Respondent hereby certifies compliance with all the ordered provisions in the Complaint.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Respondent is 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.

12. 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.

13. Respondent operates one (1) petroleum-derived products terminal, the St. Thomas Terminal in St. Thomas, U.S. Virgin Islands. The St. Thomas Terminal is located in the cargo area of the Cyril E. King St. Thomas Airport, at Charlotte Amalie. Respondent's petroleum-derived product terminals in Puerto Rico are: Guaynabo Terminal and LLM Terminal.

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

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

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

17. Respondent is and has been at all times relevant the "operator" of the petroleum-derived product terminals (hereinafter "Terminals" or "Facilities") described in paragraphs 13 through 15, as that term is defined in 40 C.F.R. § 260.10.

18. 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.

19. 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 (the "St. Thomas Inspection").

20. 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 (the "Guaynabo Inspection").

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

VIOLATIONS

1. Failure to Make Hazardous Waste Determination

22. 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.

23. 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.

24. 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.

25. 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.

26. Prior to, at least, April 22, 2016, Respondent generated the following waste streams at the LMM 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).

27. On or about April 26, 2016, Respondent claimed that the abovementioned waste streams were materials. However, Respondent failed to provide appropriate documentation to support these claims.

28. Each of the waste streams identified in paragraph 26 are "solid waste," as defined in 40 C.F.R. § 261.2.

29. Prior to, at least, April 22, 2016, Respondent failed to make a hazardous waste determination for the waste streams described in paragraph 26.

30. Respondent's failure to make a hazardous waste determination for the waste streams described in paragraph 26, constitutes a violation of 40 C.F.R. § 262.11.

31. Respondent did not provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to support its claim that certain materials were not solid wastes, as required by 40 C.F.R. § 261.2(f).

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

32. 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.

33. 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.

34. 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."

35. 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.

36. 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.

37. 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.

38. 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."

39. 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."

40. 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.

41. 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.

42. 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."

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

44. 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.

45. 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).

3. Failure to Minimize Risk

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

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

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

53. 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.

54. 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 had been developed for each one of the hazardous wastes generated.

55. 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 had been developed for each one of the types of waste generated at the St. Thomas Terminal.

56. 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.

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

57. 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.

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

59. Respondent's failures to include hazardous waste management provisions in the Facility Response Plans for the St. Thomas and LMM Terminals constitute violations of 40 C.F.R. § 265.52.

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

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

6. Failure to Comply with Universal Waste Management Requirements

65. 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.

66. 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)."

67. 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.

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

69. At the time of the LMM 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 LMM Terminal.

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

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

72. 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.

LIABILITY FOR PENALTIES AND INJUNCTIVE RELIEF

73. Respondent's failure to comply with 40 C.F.R. §§ 262.11, 265.31 - 265.37, 265.52, 264.171, 264.173, 265.171, 265.173, 270.1(c), 273.13, 273.14, 273.17, subjects it to penalties and injunctive relief pursuant to Section 3008 of the Act, 42 U.S.C. § 6928.

CONSENT AGREEMENT

74. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies specific factual allegations contained in the Complaint.

75. Respondent shall pay a civil penalty to EPA in the total amount of one hundred eighty thousand dollars ($180,000.00). The total civil penalty amount shall be paid in one payment made by cashier's or certified checks or by Electronic Fund Transfers (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

76. The check shall be identified with a notation thereon: **In the Matter of: Total Petroleum Puerto Rico Corp.**, and shall bear thereon the Docket Number: **RCRA-02-2018-7101**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

1) Amount of Payment
2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.

4) Federal Reserve Bank of New York ABA routing number: 021030004.
5) Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency."
6) Name of Respondent: **Total Petroleum Puerto Rico Corp**
7) Case Number: **RCRA-02-2018-7101**

77. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to:

Carolina Jordán-García
Office of Regional Counsel-Caribbean Team
U.S. Environmental Protection Agency - Region 2
City View Plaza II - Suite 7000
48 Rd. 165 Km. 1.2
Guaynabo, PR 00968-8069
jordan-garcia.carolina@epa.gov

and

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

78. The payment of one hundred eighty thousand dollars ($180,000.00) must be received on or before thirty (30) calendar days after the Effective Date of the Final Order, which is located at the end of this CA/FO. The date by which the payment must be received shall hereinafter be referred to as the "Due Date."

a. Failure to pay the civil penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Further, if the payment is not received on or before the Due Date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars ($15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the Due Date.

c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

SUPPLEMENTAL ENVIRONMENTAL PROJECT

79. Respondent shall complete a Supplemental Environmental Project ("SEP") consisting of

providing the Fire Fighter Bureau of the Puerto Rico Department of Public Security (hereinafter, "FFB/DPS") and the Aircraft Rescue and Fire Fighting Department of the Virgin Islands Ports Authority (hereinafter, the "ARFF/VIPA"), as local emergency response or planning entities situated in the vicinity of Respondent's facilities and selected by Respondent, with new equipment and/or the necessary gear to address fires and emergencies that may cause serious damages to human beings, properties and the environment, as further described in Appendix A of this CA/FO.

80. The SEP is an emergency planning and preparedness project, for which the goal is to provide necessary emergency equipment to the responsible state and local emergency response entities, enabling them to protect the environment and people that could be harmed by an accident. Respondent's alleged violations of RCRA emergency planning/local authorities arrangement requirements impaired the ability of the FFB/DPS and the ARFF/VIPA to plan for and effectively respond to emergency incidents in Puerto Rico and St. Thomas USVI, and the actions proposed under this SEP will help to address those impacts.

81. As part of the SEP and as described in Appendix A of this CA/FO, Respondent shall provide for the purchase and delivery of necessary equipment and gear to enhance quick and effective response to emergencies.

82. As part of the SEP, the equipment to be purchased, itemized in the Equipment List in Appendix A of this CA/FO, will be purchased within sixty (60) days of the effective date of this CA/FO.

83. As part of the SEP and as described in Appendix A of this CA/FO, Respondent has verified and will continue to verify for each one of its purchases that there is no open federal financial assistance transaction that is funding or could fund the same activity as the SEP and that it has been informed by the FFB/DPS and ARFF/VIPA, that neither is a party to such transaction.

84. As part of the SEP and as described in Appendix A of this CA/FO, Respondent shall provide quarterly progress reports to EPA, commencing on the Effective Date of the CA/FO, detailing progress of activities and status. The reports shall be submitted until Respondent's submission of the SEP Completion Report.

85. Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this CA/FO and Appendix A, within ten (10) months following the Effective Date (which shall be the date of filing with the Regional Hearing Clerk). For purposes of this section, "satisfactory completion" shall mean, at a minimum, performing all tasks identified in this CA/FO and Appendix A.

86. In the event that either of the parties proposes a change to the SEP and/or Appendix A, Respondent shall submit for EPA approval, modification and approval, or disapproval, a modified Appendix A incorporating such proposed changes.

87. If EPA approves a change to the SEP and/or Appendix A, the EPA approved modification shall be incorporated by reference into this CA/FO and shall be binding and enforceable.

88. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent, shall be not less than ONE HUNDRED TEN THOUSAND DOLLARS ($110,000.00). Respondent shall include documentation of the expenditures made in connection with the SEP in quarterly progress reports and as part of the SEP Completion Report. The final determination whether the expenditures are eligible for being credited toward the required total expenditure amount will be made by EPA.

89. **SEP Certifications:**

With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP will be at least $110,000.00;

b. That, as of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That Respondent has selected FFB/DPS and ARFF/VIPA to receive the SEP;

d. That the SEP is not a project that Respondent was planning or intending to perform, or implement other than in settlement of the claims resolved in this Consent Agreement;

e. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

g. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;

h. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and

i. That Respondent has inquired and will continue to inquire whether the FFB/DPS and ARFF/VIPA are parties to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP to confirm with the FFB/DPS and ARFF/VIPA, that neither is a party to such transaction.

90. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA within forty-five (45) calendar days after the completion of all activities, as described in Appendix A. The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented, including evidence of completion (which may include, but is not limited to, photos, vendor invoices or receipts, correspondence from FFB/DPS and ARFF/VIPA, etc.);

b. a description of any problems encountered in completing the SEP and the solutions thereto;

c. an itemized list of all SEP costs;

d. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO and Appendix A; and

e. a description of the environmental and public health benefits associated with the SEP with a quantification of the benefits, if feasible.

91. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

> *I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

92. Respondent agrees that failure to submit the SEP Completion Report required shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to paragraph 96, below.

93. Respondent shall maintain legible copies of any documentation related to reports submitted to EPA pursuant to this CA/FO for a term of five (5) years after the implementation of the SEP and shall provide the documentation to EPA not more than ten (10) working days after a request for such information.

94. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, as specified in this CA/FO and Appendix A of this CA/FO, shall include the following language:

> *This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act.*

The public statement shall also be made in Spanish as follows:

Este proyecto fue realizado como parte de un acuerdo legal con relación a una acción de cumplimiento por violaciones a la Ley Federal de Conservación y Recuperación de Recursos presentada por la Agencia Federal de Protección Ambiental de los Estados Unidos.

95. **EPA's Acceptance of SEP Completion Report:**

a. After receipt of the SEP Completion Report , EPA will in writing: (i) notify Respondent regarding any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 96, below.

b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA will allow Respondent the opportunity to object in writing to the notification of deficiency made pursuant to this Paragraph within twenty (20) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA will provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 96, below.

96. **Stipulated Penalties:**

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described above and in

Appendix A, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. if Respondent fails to complete the SEP, Respondent shall pay a stipulated penalty of $121,000.00);

ii. if the SEP has been partially completed, and (a) Respondent can demonstrate that the partially completed SEP provides quantifiable environmental and/or public health benefits, and (b) can provide documentation to EPA's satisfaction of the expenditure of relevant

eligible costs, EPA, in its discretion, may reduce the stipulated penalties, by an amount not to exceed the documented expenditure of eligible costs, from the stipulated penalty otherwise due;

iii. for failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of $350 for each day after the report was due until the report is submitted; and

iv. for failure to submit any report required by the SEP and Appendix A, or pursuant to any other paragraph herein, Respondent shall pay a stipulated penalty in the amount of $350 for each day after the report was originally due until the report is submitted.

b. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

c. Respondent shall pay stipulated penalties within thirty (30) days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Such check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Any check shall be identified with a notation of the name and docket number of this case set forth in the caption on the first page of this document. A copy of any penalty check and any transmittal letter shall be sent to each of the addresses in paragraph 77, above.

Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 78, above.

General Provisions

97. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full payment of the civil penalty herein) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

98. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of the settlement are set forth herein.

99. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this CA/FO or any of its terms and conditions.

100. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Final Order included herein, including any right to contest any allegations or EPA's Findings of Fact or Conclusions of Law contained within these documents.

101. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, Commonwealth or local law, regulation or permit.

102. Each party shall bear its own costs and fees in this matter.

103. The representative of Respondent signing this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent and its officials including authorized representatives and successors or assigns.

104. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

105. The effective date of this CA/FO shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

RESPONDENT:

Total Petroleum Puerto Rico Corp.

BY: 

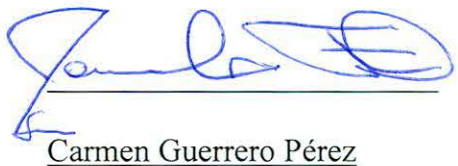
NAME: Denise Rodríguez

TITLE: Duly Authorized Responsible Corporate Officer/Legal Manager

DATE: 7/31/2019

COMPLAINANT:

United States Environmental Protection Agency - Region 2

BY: 

NAME: Carmen Guerrero Pérez

TITLE: Director, Caribbean Environmental Protection Division

DATE: July 30th 2019

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York 10007.

Peter D. Lopez
Regional Administrator
EPA-Region 2

DATE: 8/22/19

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

EMERGENCY PLANNING AND PREPAREDNESS PROJECT TO ASSIST THE PUERTO RICO FIRE FIGHTER CORP., AND THE ST. THOMAS AIR RESCUE AND FIREFIGHTER DEPARTMENT OF THE VI PORT AUTHORITY

SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Total Petroleum Puerto Rico Corp. (hereinafter, "Total" or "Respondent"), will provide to the Fire Fighter Bureau of the Puerto Rico Department of Public Security (hereinafter, "FFB/DPS") and to the Cyril E. King Airport Aircraft Rescue and Fire Fighting Department of the Virgin Islands Port Authority (hereinafter, "ARFF/VIPA") the emergency response or planning entities located in the vicinity of Total's facilities, with equipment necessary to respond to and address emergencies that may cause serious damage to human beings, properties and the environment. The equipment provided through this Supplemental Environmental Project ("SEP") will enhance the capabilities of FFB/DPS and ARFF/VIPA and facilitate quick and effective response to emergency events, in the vicinity of the Respondent's facilities, where the violations alleged by EPA occurred.
Respondent's alleged RCRA emergency planning/local authorities arrangement violations impaired the ability of the FFB/DPS and the ARFF/VIPA to plan for and effectively respond to emergency incidents in Puerto Rico and St. Thomas USVI, and the actions proposed under this SEP will help to address those impacts.

REQUIREMENTS OF THE SEP

1. Equipment List: Total will purchase the following equipment/gear as part of the SEP, to the respective recipients:

a. For ARFF/VIPA, the list of equipment/gear consists of:

- one (1) Firefighter Hydraulic Access/Rescue Tool, Holmatro GCT 5160 EVO 3 Combi Tool for spreading, cutting, squeezing and pulling - cordless version, with 2 Battery 6 AH -28V Holmstrom, and one (1) Battery Charger BCH2 100-120 VAC Holmatro;
- eleven (11) Double Jacket Fire Hoses 1.5" x 50' Light Rubber Lining, 100% Polyester Outer Jacket, 800/400 PSI, Orange Color Glo-Lite Treatment included with aluminum couplings attached NST, by Key Fire Hose Corp.; and

- ten (10) Double Jacket Fire Hoses 2.5" x 50' , Light Rubber Lining, 100% Polyester Outer Jacket, 800/400 PSI, Yellow Color Glo-Lite Treatment included with aluminum couplings attached NST fires, by Key Fire Hose Corp.

b. For the FFB/DPS, the list of equipment/gear consists of:

- Thirty-one (31) "Bunker Suit Gear Sets," which include: (a) structural firefighting helmets, (b) NFPA carbon technology hoods, (c) high-back structural firefighter's trouser, (d) firefighter flex 24/7 gloves (pair), (e) structural firefighting pull-on leather boots, (f) heavy duty large equipment bag (black color), and (g) flashlights "survivor division 2" model.

2.Prior to the purchase of equipment, Total will provide a written certification stating that it has continued to verify for each one of its purchases that there is no open federal financial assistance transaction that is funding or could fund the same activity as the SEP and that it has been informed by the FFB/DPS and ARFF/VIPA, that neither is a party to such transaction.

3. Delivery of Equipment: Once received, Total will ensure the delivery of equipment/gear to the respective FFB/DPS and ARFF facilities.

4. Reporting: As described in Paragraph 84, commencing on the effective date of this CA/FO, Total will prepare quarterly progress reports, detailing activities and status, and providing copies of all purchase/sales/P.O.s receipts in connection with the order and delivery of equipment and/or gear. As described in Paragraph 90, within forty-five (45) days after completion of all activities in this Appendix, Total will submit a SEP Completion Report, which meets the requirements specified in the CA/FO.

5. Schedule Deadlines and Changes: Total will comply with any and all schedule deadlines of the SEP clauses provided in the CA/FO and this Appendix A. Any request for changes and/or extensions to the SEP and/or Appendix A shall be made in accordance with Paragraph 86 and 87 of the CA/FO.

SEP COST AND IMPLEMENTATION SCHEDULE

6. The total cost of the SEP is $110,000.00, allocated as follows:

- No less than $92,000.00 worth of equipment to the FFB/DPS to complete the SEP, in connection with the alleged violations at the Guaynabo and the Luis Muñoz Marín Airport terminals and taking into consideration that Puerto Rico is significantly larger and more populated that St. Thomas.
- No less than $18,000.00 worth of equipment to the St. Thomas ARFF/VIPA to complete the SEP, in connection with the alleged violations at the St. Thomas terminal and taking

into consideration that St. Thomas is significantly smaller and much less populated than Puerto Rico.

7. This estimate includes all costs associated with the payment of the equipment, shipping and delivery charges, if applicable. Eligible costs do not include administrative expenses, employee time or salaries, legal fees or contractor oversight.

8. Total will provide quarterly progress reports to EPA, commencing on the Effective Date of the CA/FO, detailing progress of activities and status. Total shall include documentation of the expenditures made in connection with the SEP in its quarterly progress reports and as part of the SEP Completion Report, in accordance with the requirements of the CA/FO and this Appendix A.

9. Respondent will complete the SEP in accordance with the requirements of the CA/FO and this Appendix A, within ten (10) months following the Effective Date (which shall be the date of filing with the Regional Hearing Clerk).

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2019 I caused to be mailed a copy of the Consent Agreement and Final Order entered In the Matter of: Total Puerto Rico Corp.; Docket No.: RCRA-02-2018-7101 to be sent to the following persons in the manner indicated:

By OALJ E-Filing system:
Hon. Susan L. Biro
Chief Administrative Law Judge
U.S. EPA/OALJ 1200 Pennsylvania Avenue
NW Mail Code 1900R
Washington DC 20460

By UPS:
Karen Maples
Regional Hearing Clerk
U.S. EPA – Region 2
290 Broadway, 16th Floor
New York, New York 10007

By Email and Certified Mail / Return Receipt Requested:
Rafael Rivera-Yancovich
Toro, Colón and Mullet, PSC
P.O. Box 19583
San Juan, Puerto Rico 00919-5383

Date: 9/10/19