

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency  
2018 JUL 20 PM 4:01  
REGIONAL HEARING  
CLERK

In the Matter of:

**Total Petroleum Puerto Rico Corp.**

**Respondent**

Docket No. RCRA-02-2018-7101

RE: Complaint, Compliance Order, and Notice of  
Opportunity for Hearing

**ANSWER TO ADMINISTRATIVE COMPLAINT, COMPLIANCE ORDER, AND  
NOTICE OF OPPORTUNITY FOR HEARING**

**TO THE REGIONAL HEARING CLERK:**

COMES NOW, Total Petroleum Puerto Rico, Corp. (hereinafter, "Respondent" or "TPPRC"), represented by the undersigned attorneys and respectfully states and prays:

This Answer (the "Answer") is submitted by Respondent in response to the "*Complaint, Compliance Order, And Notice of Opportunity For Hearing*" (the, "Complaint") originally issued by the U.S. Environmental Protection Agency, Region 2 (hereinafter, "EPA" or the "Complainant") on March 22, 2018, and served upon TPPRC on March 28, 2018. However, as explained by the EPA Region 2 Hearing Clerk's Office during a telephone conference with TPPRC's external legal counsel (Rafael Rivera Yankovich, Esq. of Toro, Colón & Mullet, PSC) on April 26<sup>th</sup>, 2018, the original Complaint was issued by the EPA Caribbean Environmental Protection Division without following the internal agency notification proceedings. Therefore, the EPA had to re-issue an identical Complaint on that same date (i.e., April 26<sup>th</sup>, 2018), including a Certificate of Service dated April 30<sup>th</sup>, 2018. Nonetheless, despite the Complaint having being re-sent by the EPA

through Certified Mail on April 30<sup>th</sup>, the Complaint was mistakenly returned to sender (i.e., EPA) by the U.S. Postal Service on June 15<sup>th</sup>, 2018. See, USPS Envelope, **Attachment 1**. Thus, after discovering the U.S. Postal Service's error, EPA Assistant Regional Counsel contacted the TPPRC's external legal counsel offices to inquire on this matter and the Complaint was obtained by hand on June 19<sup>th</sup>, 2018, at the U.S. EPA Caribbean Environmental Protection Division offices.

In sum, the Complaint has been issued in connection with certain site visits conducted by Inspectors of the U.S. Environmental Protection Agency, Caribbean Environmental Protection Division ("EPA-CEPD") of three of TPPRC's facilities (i.e., Guaynabo Bulk Terminal, San Juan Terminal (LMMIA) and the St. Thomas Terminal), which occurred more than two (2) years ago in the case of the Guaynabo and San Juan Terminals and more than three (3) in the case of the St. Thomas Terminal, and for which no compliance inspections reports or further formal notifications were ever received by TPPRC on behalf of the EPA-CEPD Inspectors. The Complaint (received more than 2 and three 3 years after the site visits) is the only formal notification that TPPRC has received where the EPA points to certain alleged violations of the Solid Waste Disposal Act and the Hazardous and Solid Waste Amendments of 1984 (jointly referred to as "RCRA") and its pertinent regulations governing the handling and management of hazardous waste at 40 CFR Parts 260-273 and 279 ("RCRA Regulations").<sup>1</sup>

The above notwithstanding, despite the difficulty of gathering information on events allegedly transpired so long ago, the changes in personnel occurred at each facility and the

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<sup>1</sup> In fact, the Complaint does not even make reference to the recent amendments suffered by the RCRA Regulations which became effective on May 17<sup>th</sup>, 2017, that reorganized and modified significantly several regulatory sections in connection with hazardous waste generators.

physical modifications undergone by each of the facilities during the previous years, TPPRC hereby submits its response to the Complaint (“Response”). For purposes of clarity, the TPPRC’s Response follows for the most part the same order of the Complaint. For those portions of the Response that do not follow such order, Respondent clarifies its response accordingly.

### **RESPONSE TO COMPLAINT’S GENERAL STATEMENT**

The first paragraph of the Complaint’s General Statement contains a legal statement establishing that the civil administrative proceeding is instituted pursuant to various legal statutes and regulations, including Section 3008 of RCRA, for injunctive relief and assessment of civil penalties, and referencing EPA’s promulgation of regulations for the handling and management of hazardous waste at 40 C.F.R. Part 260-273 and 279, and does not include any factual allegations. Accordingly, no answer is required. If the allegation requires an answer, then it is denied.

The second paragraph of the Complaint’s General Statement contains a general allegation that the Complaint serves notice that the EPA has preliminary determined that TPPRC allegedly violated certain provisions of RCRA and federal regulations concerning the management of hazardous waste and universal waste at its terminals located in Carolina (“San Juan Terminal” or “SJU”) and Guaynabo (“Guaynabo Bulk Terminal” or “GBT”), Puerto Rico, and in St. Thomas, U.S. Virgin Islands (“St. Thomas Terminal” or “STT”), and does not include any factual allegations. Accordingly, no answer is required. If the allegation requires an answer, then it is denied.

The third paragraph of the Complaint's General Statement contains certain legal provisions with respect to EPA's authority to allow a state to operate a "hazardous waste program" and that Puerto Rico and the Government of the U.S. Virgin Islands are considered to be States as defined by the Act, but that are not authorized by EPA to administer a hazardous waste program under Section 3006 of RCRA, thus EPA retains primary responsibility for the requirements promulgated pursuant to RCRA. This paragraph does not make any factual allegations, therefore, this paragraph is denied.

**I. Allegations with Respect to Respondent's Background**

1. Paragraph 1 of the Complaint is admitted.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is admitted in terms that TPPRC is a "person" as that term is defined under Section 1004(15) of the Act, 42 U.S.C. Sec. 6903(15) and 40 CFR Sec. 260.10.
4. Paragraph 4 of the Complaint is admitted in part and denied in part as follows. TPPRC admits that it operates one (1) petroleum-derived products terminal, known as the St. Thomas Terminal or STT, at St. Thomas, U.S. Virgin Islands. The rest of the paragraph is denied since there are no further allegations in connection with the operation of any of the service stations operated by TPPRC in St. Thomas, thus it is irrelevant to this matter.
5. Paragraph 5 of the Complaint is admitted.
6. Paragraph 6 of the Complaint is admitted in part and denied in part, as follows. TPPRC admits that it operates two (2) petroleum-derived product terminals, known as the

Guaynabo Bulk Terminal or GBT, in Guaynabo, Puerto Rico, and the San Juan Terminal or SJU, at the cargo area of the Luis Muñoz Marín International Airport in Carolina, Puerto Rico. The rest of the paragraph is denied since there are no further allegations in connection with the operation of any of the service stations operated by TPPRC in Puerto Rico, thus it is impertinent to this matter

7. Paragraph 7 of the Complaint is admitted.
8. Paragraph 8 of the Complaint is admitted.
9. Paragraph 9 of the Complaint is admitted.
10. Paragraph 10 of the Complaint is admitted in terms that the NAICS Code applicable to its facilities is 424710 for being facilities engaged in the wholesale distribution of petroleum products. The rest of the allegation in terms of distribution of crude petroleum and liquefied petroleum gas is denied.
11. Paragraph 11 of the Complaint is denied.
12. Paragraph 12 of the Complaint is admitted in terms that TPPRC is an “operator,” as that term is defined under 40 CFR Sec. 260.10, of the petroleum-derived product terminals known as the Guaynabo Terminal, the SJU and the St. Thomas Terminal. With respect to the term “at all times relevant” it is denied due to lack of information and the ambiguousness of the phrase “at all times relevant”.
13. Paragraph 13 of the Complaint is denied due to lack of information and the ambiguousness of the phrase “at all relevant times”.

14. Paragraph 14 of the Complaint is denied. TPPRC clarifies that its operations in Puerto Rico only date back to November 1, 2008, date when TPPRC commence to operate the St. Thomas Terminal after acquiring the operations from ESSO Virging Islands, Inc..
15. Paragraph 15 of the Complaint is admitted only that the St. Thomas Terminal has the EPA Identification Number VIR000000042, but it is denied as to allegation that the number EPA issued was in response to a July 6, 1995 submittal of a Notification of HW Activity.. As explained before, TPPRC commenced operations at the St. Thomas Terminal on November 1, 2008.
16. Paragraph 16 of the Complaint is admitted in terms that on March 5, 2012, TPPRC submitted the Biennial Report for the St. Thomas Terminal and that it updated its status to large quantity generator. However, TPPRC clarifies that the change to large quantity generator from small quantity generator at that time was due to the cleanup of one of this facility's tanks, and not because it generates large quantities of hazardous waste on a regular basis as required by the regulation.
17. Paragraph 17 of the Complaint is denied. TPPRC clarifies that its operations in the Guaynabo Terminal Puerto Rico only date back to November 1, 2008, when it commence operations after acquiring the operations from ESSO Standard Oil Company (Puerto Rico).
18. Paragraph 18 of the Complaint is admitted only that the Guaynabo Terminal has the EPA Identification Number PRD980536007, but it is denied as to allegation that the number EPA issued was in response to a April 6, 1981 submittal of a Notification of HW Activity. As explained before, TPPRC commenced operations at the Guaynabo Terminal on

November 1, 2008, when it acquired the operations from ESSO Standarda Oil (Puerto Rico).

19. Paragraph 19 of the Complaint is denied. TPPRC was not the operator of the Guaynabo Terminal in 2004.

20. Paragraph 20 of the Complaint is admitted.

21. Paragraph 21 of the Complaint is denied since TPPRC was not the operator in 1981. TPPRC clarifies that its operations at the SJU Terminal commenced on November 1, 2018, after acquiring the operations from ESSO Standard Oil (Puerto Rico).

22. Paragraph 22 of the Complaint is admitted only that the SJU Terminal has the EPA Identification Number PRD980536023, but it is denied as to allegation that the number EPA issued was in response to a April 6, 1981 submittal of a Notification of HW Activity. As explained before, TPPRC commenced operations at the SJU Terminal on November 1, 2008, when it acquired the operations from ESSO Standarda Oil (Puerto Rico).

23. Paragraph 23 of the Complaint is admitted in terms that on February 27, 2014, TPPRC submitted its Biennial Report and updated its terminal's generator status to large quantity generator. However, TPPRC clarifies that the change to large quantity generator from small quantity generator at that time was due to the cleanup of one of the facility's tanks, and not because it generates large quantities of hazardous waste on a regular basis as required by the regulation.

24. Paragraph 24 of the Complaint is admitted.

#### **Responses to EPA Investigative Activities**

### **Allegations Concerning St. Thomas Terminal**

25. In terms of Paragraph 25 of the Complaint, it is only admitted that an EPA inspector visited the St. Thomas Terminal almost more than three years ago on August 20, 2015. The rest of paragraph 25 is denied for lack in information. EPA's statement is too broad and does not even provide the name of the EPA inspector that visited the premises. Moreover, a Compliance Inspection Report nor any other report was ever provided to TPPRC with respect to the findings of the mentioned visit.
26. Paragraph 26 of the Complaint is admitted only in terms that Mr. Francisco Maldonado, Terminal Manager and Mr. Iván Pérez, Deputy Terminal Operations Manager, greeted the EPA Inspector that visited the premises. However, TPPRC clarifies that Mr. Pérez no longer works as Deputy Terminal Operations Manager of the St. Thomas Terminal.
27. Paragraph 27 of the Complaint is admitted in terms that TPPRC St. Thomas Terminal stores petroleum derived fuels such as gasoline, diesel, and jet fuel in above ground storage tanks ("ASTs"). The rest of the allegation is denied since Mr. Pérez (Terminal Operations Manager) no longer works for TPPRC and we have not being able to corroborate his statements.
28. Paragraph 28 of the Complaint is admitted in terms that certain areas of the St. Thomas Terminal were visited by the EPA Inspector, however the rest of the allegation is denied since Mr. Pérez no longer works as Deputy Terminal Operations Manager of the St. Thomas Terminal and we have not been able to confirm with Mr. Pérez the details of the



areas visited as referred to in this allegation. Also, there is no compliance inspection report for TPPRC to corroborate the areas visited by the EPA Inspector.

Oil/Water Separator Unit

29. Paragraph 29 of the Complaint is admitted in terms that there were approximately eight (8) metal containers of 55-gallons observed adjacent to the Oil/Water Separator Unit. Whether these containers were identified or not is denied due to lack of information.

30. Paragraph 30 of the Complaint is admitted in terms that there were approximately eight (8) metal containers of 55-gallons that were observed adjacent to the Oil/Water Separator Unit, however the rest of the allegation is denied since Mr. Pérez no longer works as Deputy Terminal Operations Manager of the St. Thomas Terminal and we have not been able to confirm with Mr. Pérez the details of the content as referred to in this allegation. Also, there is no compliance inspection report for TPPRC to corroborate the areas visited by the EPA Inspector.

Slop Oil Tank

31. Paragraph 31 of the Complaint is denied for lack of information. No compliance inspection report was ever issued to TPPRC in terms of the EPA Inspector's inspection of the Slop Oil Tank. However, TPPRC admits that there is an 8,000-gallon aboveground metal storage tank at the STT referred to as the Slop Oil Tank.

32. Paragraph 32 of the Complaint is denied for lack of information. No compliance inspection report was issued to TPPRC in terms of the EPA Inspector's observations of the Slop Oil Tank.

33. Paragraph 33 of the Complaint is denied for lack of information. No compliance inspection report was issued to TPPRC in terms of the EPA Inspector's observations of the Slop Oil Tank. However, TPPRC admits that the Slop Oil Tank has a secondary containment structure.
34. Paragraph 34 of the Complaint is denied for lack of information. The STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate his indications to the EPA Inspector. However, TPPRC admits that the Slop Oil Tank is used to accumulate "contact water".
35. Paragraph 35 of the Complaint is denied in terms of the characterization made by the EPA that the Slop Oil Tank was *"not receiving additional 'waste' at the time because it had reached operational storage capacity of 6,000 gallons."* The STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate his indications to the EPA Inspector. However, TPPRC clarifies that the Slop Tank was used to accumulate "contact water", and should not be characterized as a "waste".
36. Paragraph 36 of the Complaint is denied in terms of the characterization made by the EPA that Slop Oil Tank *"also receives waste derived from the maintenance and cleaning operations of the fuel AST's"*. The STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate his indications to the EPA Inspector. However, TPPRC clarifies that the Slop Tank was used to accumulate "contact water", and should not be characterized as a "waste".

37. Paragraph 37 of the Complaint is denied in terms of the characterization made by the EPA that *“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”*. The STT’s Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate his indications to the EPA Inspector. However, TPPRC clarifies that the Slop Tank was used to accumulate “contact water”, and should not be characterized as a “waste”.

Hazardous Waste Accumulation Area

38. Paragraph 38 of the Complaint is denied in terms that EPA is alleging that the STT Hazardous Wastes Accumulation Area was storing hazardous and non-hazardous waste in 55-gallon containers without maintaining the necessary aisle space to allow unobstructed movement of personnel and equipment. Section 265.35 of 40 CFR provides that the owner *“must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.”* The STT’s waste storage area is a very small area in which drums are divided into hazardous waste and non-hazardous waste in an area with secondary containment, and with fire protection, spill control equipment and decontamination within reach. See, *STT Hazmat Storage Area in its Current State, Attachment 2*. Aisle space is not really necessary because the area is so small that it is accessible to personnel from any surrounding position in case of an emergency. In

addition, not all the containers stored in this area are necessarily classified as hazardous waste. The rule does not provide specific measures in terms of the space that needs to be allowed between containers, thus EPA's allegations are denied.

39. Paragraph 39 of the Complaint is denied due to lack of information. The EPA is alleging that at least fifteen (15) 55-gallon containers were labeled as hazardous waste but that the "accumulation dates" were not legible on the containers. However, no compliance inspection report was issued to TPPRC in terms of the EPA Inspector's observations with respect to the legibility of the "accumulation dates", which is a speculative allegation. Moreover, the STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate his indications to the EPA Inspector.
40. Paragraph 40 of the Complaint is denied in terms that the EPA is alleging that three of the 55-gallon hazardous waste containers were open. The EPA does not specify which three drums the agency is referring to, nor the contents of the drums nor whether the drums were closed but not sealed, thus, allegations are denied for being speculative. No compliance inspection report was issued to TPPRC in terms of the EPA Inspector's observations with respect to the allegations, which are then speculative.
41. Paragraph 41 of the Complaint is denied in terms that the EPA is alleging that two of the 55-gallon hazardous waste containers were showing advance signs of deterioration (i.e., corrosion). The EPA does not specify which two drums were showing such signs, nor does it state if these drums were leaking or broken, thus the allegations are denied for

being speculative. No compliance inspection report was issued to TPPRC in terms of the EPA Inspector's observations.

42. Paragraph 42 of the Complaint is denied in terms that the EPA is alleging that the 15 hazardous waste containers had been stored there since at least 2014, according to the St. Thomas Operations Manager. The STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate his indications to the EPA Inspector. This allegation is denied for being speculative and based on statements that may have been inaccurate.

Request for Documents

43. Paragraphs 43 of the Complaint is denied due to lack of information. The STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate which documents were requested by the EPA Inspector during the visit.

44. Paragraph 44 of the Complaint is denied due to lack of information. The STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate which documents were reviewed by the EPA Inspector.

45. Paragraph 45 of the Complaint is partially admitted only in terms that the St. Thomas Operations Manager contacted TPPRC's Health, Safety and Environmental Quality ("HSEQ") Manager, Ms. Polauris Vázquez via phone to inquire about certain documents. EPA's allegations in terms that the documents were missing are misrepresentative of the facts, and thus are denied.

46. Paragraph 46 of the Complaint is denied due to lack of information. The STT's Operations Manager no longer works as Deputy Terminal Operations Manager, thus we have not been able to corroborate which documents were shown to the EPA Inspector.
47. Paragraph 47 of the Complaint is denied due to lack of information in terms of which information was agreed to be submitted by the St. Thomas's Operations Manager and Terminal Manager within 30 days.
48. Paragraph 48 of the Complaint is admitted in terms that an e-mail was sent to TPPRC.
49. Paragraph 49 of the Complaint is admitted in terms that an e-mail was sent to TPPRC requesting certain documents.
50. Paragraph 50 of the Complaint is admitted.
51. Paragraph 51 of the Complaint is admitted.
52. Paragraph 52 of the Complaint is admitted only in terms that TPPRC submitted certain documents to the EPA on October 29, 2015. The rest of the allegation is denied in terms of how the EPA used the information submitted to evaluate the compliance status of the STT.
53. Paragraph 53 of the Complaint is admitted in terms of the statements included in TPPRC's response letter dated October 29, 2015, with respect to the samples collected from the Slop Oil Tank by the Virgin Islands Regulated Wastes Management Inc.
54. Paragraph 54 of the Complaint is admitted in terms that TPPRC provided a copy of Section 3 of its Facility Response Plan ("FRP") with its letter dated October 29, 2015. In this regard, TPPRC clarifies that a complete copy of the FRP was not submitted to the EPA

Inspector due to its large volume and lack of specificity on behalf of the EPA, but TPPRC specifically stated that a copy of the entire plan was available for review. In this regard, we have included a copy of the STT FRP as **Attachment 3**.

55. Paragraph 55 of the Complaint states that upon review of the information submitted by TPPRC, the EPA concluded that Respondent allegedly failed to include certain information. This paragraph is denied, as follows:

- a. Paragraph 55(a) of the Complaint alleges that TPPRC failed to include agreement letter/notifications to local police department, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to § 265.37 of 40 CFR. However, what this Section provides is that: “[t]he owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations: (1) Arrangements 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; (2) 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; (3) Agreements with State emergency response

*teams, emergency response contractors, and equipment suppliers; and (4) 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.”* §265.37 does not make a specific requirement in terms of a written letter/notification, but indicates that arrangements must be made. In this regard, in Section 2 of the FRP, even though it was not delivered to the EPA, there is a vast list of emergency notification contacts, including the local police, fire department, hospitals and many others (i.e., civil defense, local radio stations, neighbors, etc.), which are available to coordinate emergency services. See STT FRP, **Attachment 3**. In addition, Section 4 of the FRP, even though it was not provided to the EPA Inspector, provides the contacts for the emergency response personnel for the company and of all contractors retained by the St. Thomas Terminal to assist in responding to emergency response activities. See STT FRP, **Attachment 3**.

Moreover, being that the STT is located within the Cyril E. King Airport in St. Thomas, the Fire Department visits the facility on a monthly basis to inspect all areas, review documents, conduct joint drills to prepare for emergency situations. These inspections are required to be conducted at the Cyril E. King Airport in compliance with strict Federal Aviation Administration requirements. Therefore, this allegation is denied.



- b. Paragraph 55(b) is denied. Section 2 of the FRP, even though it was not delivered to the EPA, the emergency notification contacts lists, includes a Qualified Individual and an Alternate Qualified Individual which work as coordinators during emergency situations. See STT FRP, **Attachment 3**.
- c. Paragraph 55(c) is denied. Section 5 of the FRP, even though it was not delivered to the EPA, provides a list of the necessary equipment resources, owned by the St. Thomas Terminal and which are available at the Terminal to respond to a small, medium, or worst case discharge within appropriate response times. All of the equipment presented in the list is located at the Terminal at the locations shown on the Terminal's Evacuation Plan, and it includes fire response and firefighting equipment, spill control equipment, communication equipment, dispersant and adsorbent equipment, among others. See, STT FRP, **Attachment 3**.
- d. Paragraph 55(d) is denied. Section 6 of the FRP, even though it was not delivered to the EPA, provides a detailed outline of procedures for evacuating the St. Thomas Terminal in case of an emergency that prompts the evacuation of all personnel from the Plant in the safest possible manner. This evacuation plan includes the notification, the location of alarms, the actions to be taken, the evacuation routes, the assembly points and transportation of the injured, among others. See STT FRP, **Attachment 3**.

56. Paragraph 56 of the Complaint is admitted in terms that a document entitled *Total Company Rule: Waste Management*, dated December 2013, was submitted to the EPA as

attachment 4 of the response dated October 29, 2015. In terms of the alleged waste streams that are to be managed as hazardous waste, TPPRC clarifies that this is Total Company Rule is meant to be treated as a general statement and internal guidance for all entities under the Marketing & Services of Total at a global level. This rule is not specific to the treatment of hazardous waste for any particular site, including the STT, the GBT and the SJU. All of these sites have had their particular waste streams identified by Clean Harbors during the past years and are being revised for purposes of the Compliance Order. Therefore, it is denied that this rule establishes the specific waste streams that are to be managed as hazardous waste for any of the particular sites subject to this Complaint.

#### Meeting at Total's Office

57. Paragraph 57 of the Complaint is admitted in terms that a meeting was held on April 26, 2016, at TPPRC's Main Office in Guaynabo. The rest of the allegation is denied.
58. Paragraph 58 of the Complaint is admitted in terms that the inspectors asked information regarding the analytical results of the St. Thomas' Slop Oil Tank samples.
59. Paragraph 59 of the Complaint is denied due to lack of information. In this regard, despite Ms. Vázquez replying that the St. Thomas Slop Oil Tank samples were determined to be hazardous waste, TPPRC STT has not been able to obtain copy of such results to verify such statement.

#### **Guaynabo Terminal**

60. In terms of Paragraph 60 of the Complaint, it is admitted that an EPA inspector visited the Guaynabo Terminal more than two years ago on March 17, 2016. The rest of paragraph 60 is denied due to lack of information. EPA's statement is too broad, and does not even provide the name of the EPA inspector that visited the premises. Moreover, a Compliance Inspection Report nor any other report was ever provided to TPPRC with respect to the findings of the mentioned visit.

61. Paragraph 61 is admitted in terms that Ms. Vivian Suárez, Bulk Terminal Manager, met the EPA Inspector.

#### Red Dye Tank

62. Paragraph 62 of the Complaint is denied. TPPRC clarifies that the substance that was observed by the EPA is called "Red Dye", which is an additive used at the GBT classified as a commercial chemical product. Moreover, the product should not be referred to as an "ongoing release of a liquid substance," since the product only drips from the piping/ancillary equipment of the 550-gallon tank and is collected into absorbent materials (i.e., pampers) which are contained inside the tank's secondary containment. Moreover, there is no free product or liquid being released per se since the product itself becomes rubberlike (i.e., like a thick coating) once it drips outside the piping/ancillary equipment.

63. Paragraph 63 of the Complaint is admitted in terms that the product was identified as "Red Dye".

64. Paragraph 64 of the Complaint is admitted in terms that absorbent materials (i.e., pampers) were observed. The rest of the paragraph is denied due to a mischaracterization of the events in connection with the “Red Dye” drip. All spill allegations are denied. As previously explained, the Red Dye is classified as a commercial chemical product, which drips from the piping/ancillary equipment of the 550-gallon tank, becoming rubberlike (i.e., forming a coating), and is collected into absorbent materials (i.e., pampers) contained inside the tank’s secondary containment. There is no free product or liquid being released per se.

65. Paragraph 65 of the Complaint is only admitted in terms that absorbent materials were being used to absorb the “Red Dye” drip and that these materials are replaced and removed each Friday. The rest of the paragraph is denied due to a mischaracterization of the events in connection with the “Red Dye” drip and spill allegations.

#### Hazardous Waste Accumulation Area

66. Paragraph 66 of the Complaint is denied for lack of information in terms that the EPA is alleging that the Inspector observed at least forty one (41) 55-gallon containers of hazardous waste without clear or legible markings indicating their “accumulation dates”. This allegation lacks specificity and is speculative since TPPRC did not even receive a copy of the Compliance Inspection Report providing detail of this finding.

67. Paragraph 67 of the Complaint is denied in terms that the EPA is alleging that three of the 55-gallon hazardous waste containers exhibited signs of deterioration (i.e., corrosion). The EPA does not specify which three drums were showing such signs, nor does it state if

these drums were leaking or broken, thus the allegations are denied for lack of information and for being speculative.

68. Paragraph 68 of the Complaint is denied in terms that EPA is alleging that the access through the containers was limited due to lack of aisle space. Section 265.35 of 40 CFR provides that the owner *“must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.”* The Guaynabo Bulk Terminal’s waste storage area was divided into hazardous waste storage area and non-hazardous waste storage area, a satellite area, decontamination area and spill control equipment with enough room for personnel to move about. The rule does not provide specific measures in terms of the space that needs to be allowed between containers, thus EPA’s allegations are denied.

69. Paragraph 69 of the Complaint is denied. The Guaynabo Terminal is equipped with portable fire extinguishers and spill control equipment, among other emergency response equipment as listed in the Facility’s Response Plan. The regulations do not require that the equipment be located inside the storage area. The equipment in the GBT was adjacent and immediately accessible. See **Attachment 4**.

#### Document Review

70. Paragraph 70 of the Complaint is admitted in terms that the inspectors informally requested certain information concerning the GBT. The rest of the allegation is denied since no formal request of such information was requested. All the information in

connection with the facility's layout, emergency contacts, evacuation routes, and others is contained in the Facility Response Plan. In addition, the GBT has been visited and inspected at the request of TPPRC by the Fire Department on previous occasions to plan for emergency situations.

71. Paragraph 71 of the Complaint is denied. EPA did not make a formal request for any information nor issued a Request for Information providing personnel from the Guaynabo Terminal with time to gather the information necessary. All the information in connection with the facility's layout, emergency contacts, evacuation routes, and others is contained in the Facility Response Plan. In addition, the GBT has been visited and inspected by the Fire Department on previous occasions to plan for emergency situations.

#### **SJU Terminal**

72. In terms of Paragraph 72 of the Complaint, it is admitted that an EPA inspector visited the SJU Terminal more than two (2) years ago on April 22, 2016. The rest of paragraph 72 is denied due to lack of information. EPA's statement is too broad, and does not even provide the name of the EPA inspector that visited the premises. Moreover, a Compliance Inspection Report was never provided to TPPRC with respect to the findings of the mentioned visit nor a formal request for information was issued.

73. Paragraph 73 is admitted in terms that Mr. Pedro Rodríguez, Terminal Supervisor, met the EPA Inspector. The rest of the allegation is denied for lack of information.

74. Paragraph 74 of the Complaint is admitted.

#### **Mechanical Shop**

75. Paragraph 75 of the Complaint is admitted in terms that there were approximately forty (40) spent fluorescent lamps stored in the mechanical shop. However, as informed in TPPRC's response letter received by the EPA on June 14, 2016, the lamps observed at the mechanical shop were disposed of on May 2, 2016 as Non-Hazardous, Non-DOT Universal Waste Lamps.
76. Paragraph 76 of the Complaint is denied due to lack of information. The rest of the allegation in terms of the broken residues, TPPRC clarifies that some of the broken residues observed on the floor pertained to the lamp casings and not the lamps per se. Moreover, TPPRC never received a Compliance Inspection Report detailing EPA's observations.
77. Paragraph 77 of the Complaint is denied due to lack of information. Mr. Pedro Rodríguez is no longer the SJU Terminal Supervisor and TPPRC has not been able to verify his statements regarding the accumulation time of the lamps since the site visit was conducted more than two (2) years ago.
78. Paragraph 78 of the Complaint is denied due to lack of information. Moreover, TPPRC never received a Compliance Inspection Report detailing EPA's observations in terms that the lamps were not identified as "Universal Waste-Lamps," "Waste Lamps" or "Used Lamps".

Slop Oil Tank Area

79. Paragraph 79 of the Complaint is admitted in terms that the EPA Inspectors made observations of the 14,000-gallon above ground storage tank with provided with secondary containment.

80. Paragraph 80 of the Complaint is denied due to lack of information. Mr. Pedro Rodríguez is no longer the SJU Terminal Supervisor and TPPRC has not been able to verify his statements.

#### Request for Documents

81. Paragraph 81 of the Complaint is admitted in terms that the inspectors informally requested certain information concerning the SJU Terminal. The rest of the allegation is denied since no formal request of such information was received by TPPRC and Mr. Pedro Rodríguez is no longer the SJU Terminal Supervisor.

82. Paragraph 82 of the Complaint is admitted in terms that the HSEQ Manager was contacted in connection with the informal documentation requested by the EPA Inspectors.

83. Paragraph 83 of the Complaint is admitted in terms that a follow up meeting was requested with EPA. The rest of the allegation is denied.

#### Follow-up Meeting

84. Paragraph 84 of the Complaint is admitted.

85. Paragraph 85 of the Complaint is admitted.

86. Paragraph 86 of the Complaint is admitted in terms that certain documents were provided to the EPA.

87. Paragraph 87 of the Complaint is admitted.



88. Paragraph 88 of the Complaint is admitted.
89. Paragraph 89 of the Complaint is admitted.
90. Paragraph 90 of the Complaint is admitted in terms that EPA requested information on sale transactions. The rest of the allegation is denied because the documentation was not available to be provided at that particular moment.
91. Paragraph 91 of the Complaint is denied. The allegation that TPPRC had agreed to provide certain information is misleading. At the time of the meeting, the EPA had not issued a formal request for information in connection with the hazardous waste determination on “contact water” and Slop Oil Tank’s contents nor a description of actions taken to address the management and disposal of the lamps. Paragraph 81 of the Complaint indicated the documents informally requested during the site visit.
92. Paragraph 92 of the Complaint is admitted, that once the EPA formally requested certain information during the meeting, TPPRC agreed to provide such information.
93. Paragraph 93 of the Complaint is admitted.
94. Paragraph 94 of the Complaint is admitted.
95. Paragraph 95 of the Complaint is denied in terms of its phrasing. TPPRC clarified that the facility did not generate, in any calendar month 1,000 kg/mo (2,200 lbs/mo) or more of hazardous waste. Therefore, even though the EPA Form 8700-12, Biennial Report 2016, was marked as a Large Quantity Generator, it was clarified that TPPRC SJU Terminal was not conducting hazardous waste activities as a LQG since it did not generate the threshold quantities. It is so stated in the Footnote #1 of the Complaint per se.

96. Paragraph 96 of the Complaint is admitted in terms of what is included in the Hazardous Waste Minimization Plan for the SJU Terminal. However, TPPRC clarifies that the objective of this Hazardous Waste Minimization Plan is to provide guidelines for the continuous minimization of hazardous materials, and does not necessarily mean that all sludge, all spill response material and all discarded fluorescent light bulbs are hazardous waste. These should be analyzed on a case-by-case-basis.
97. Paragraph 97 of the Complaint is admitted in terms of what is stated in the Facility Response Plan for the SJU Terminal.
98. Paragraph 98 of the Complaint is denied. The “material” from the Slop Oil Tank that is sold to third parties is a commercial chemical product to be reclaimed (i.e., kerosene) and is not a solid material per se with respect to the RCRA. Furthermore, TPPRC clarifies that no receipts were submitted to the EPA because these were not specifically requested as detailed in paragraphs 86 and 91 of the Complaint nor were requested in EPA’s e-mail communication dated April 28, 2016. However, as further clarified in the response to Count 1, the product was indeed sold once or twice per year to be reclaimed by Petrowest/Transfuel (which by the way are the same company). In this regard, we have included a communication from Transfuel, Inc., attesting to the use of the product for the mixing of its fuel at their Arecibo plant, which process is conducted to lower viscosity and sulfur from heavy product. See, Letter from Transfuel, **Attachment 5**. The invoices were prepared in Excel and worked over for every delivery. An example of such an invoice has been included as **Attachment 6**. Therefore, any allegations concerning the

contents of the Slop Tank are not pertinent and are denied since the material is not considered as a hazardous waste.

**Count 1**  
**Failure to Make Hazardous Waste Determination**

99. Paragraph 99 of the Complaint re-alleges Paragraphs 1 through 98 of the Complaint.

Responses made by TPPRC (above) to those same allegations are hereby repeated.

100. Paragraph 100 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.

101. Paragraph 101 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.

102. Paragraph 102 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.

103. Paragraph 103 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.

104. Paragraph 104 of the Complaint is denied. It seems EPA is supporting this allegation based on the Hazardous Waste Minimization Plan submitted by TPPRC on June 13, 2016. As explained in TPPRC's response to paragraph 96 (above), the objective of this Hazardous Waste Minimization Plan was to provide guidelines for the continuous minimization of hazardous materials, and does not necessarily mean that all sludge is hazardous waste and it should be analyzed on a case-by-case-basis.

In terms of paragraph (a), the Slop Tank mainly stores storm water that is collected from the pit valves at the airport runway, which is recovered by a vacuum truck and

poured into the tank, and also recovers water from the other tanks' drainage procedures. The storm water collected in the Slop Tank, as explained in TPPRC's communication of June 13, 2016 (and its attachment 9), is disposed of as non-hazardous waste at a sanitary landfill. In addition, TPPRC has included with this response copies of all the manifests from the years 2017 and 2018, in connection with the disposal of this contact water as non-hazardous. See **Attachment 7**.

In terms of paragraph (b), as explained above in paragraph 98, the material stored in the Slop Oil Tank is sold to third parties as a commercial chemical product to be reclaimed and it is not considered a waste. The product is not a solid material per se and sold once or twice per year to be reclaimed by companies such as Petrowest/Transfuel. See **Attachment 5** (communication from Transfuel, Inc., attesting to the use of the product for the mixing of its fuel at their Arecibo plant, which process is conducted to lower viscosity and sulfur from heavy product); and **Attachment 6** (sample invoice). Any allegations concerning the contents of the Slop Tank as waste are denied.

105. Paragraph 105 of the Complaint is denied. First of all, the EPA never issued a formal request for information in connection with the sales of the product from the Slop Tank that was sold to third parties and did not include such specific request in its e-mail communication dated April 28, 2016. Second, as previously explained the material stored in the Slop Oil Tank is sold to third parties as a commercial chemical product to be reclaimed and it is not considered a waste. The product is not a solid material per se and is sold once or twice per year to be reclaimed by Petrowest/Transfuel. See

**Attachment 5** (communication from Transfuel, Inc., attesting to the use of the product for the mixing of its fuel at their Arecibo plant, which process is conducted to lower viscosity and sulfur from heavy product); and **Attachment 6** (sample invoice). Any allegations concerning the contents of the Slop Tank as a waste are denied.

106. Paragraph 106 of the Complaint is denied. See response to Paragraph 104.

107. Paragraph 107 of the Complaint is denied. See response to Paragraph 104.

Although Clean Harbors has been conducting hazardous waste determinations for the SJU Facility wastes streams over the years, and which are being updated for purposes of the Compliance Order included in the Complaint, TPPRC clarifies once again that the product sold to third parties is a commercial chemical product to be reclaimed and not a hazardous waste.

108. Paragraph 108 of the Complaint is denied. See response to paragraph 107.

109. Paragraph 109 of the Complaint is denied. See response to paragraph 104 and

105. EPA never issued a formal request for information in connection with the sales of the product from the Slop Tank that was sold to third parties and did not include such specific request in its e-mail communication dated April 28, 2016. Second, as previously explained the material stored in the Slop Oil Tank is sold to third parties as a commercial chemical product to be reclaimed and it is not considered a waste. The product is not a solid material per se and is sold once or twice per year to be reclaimed by Petrowest/Transfuel. See **Attachment 5** (communication from Transfuel, Inc., attesting to the use of the product for the mixing of its fuel at their Arecibo plant, which process is

conducted to lower viscosity and sulfur from heavy product); and **Attachment 6** (sample invoice).

110. Paragraph 110 of the Complaint is denied.

## **Count 2**

### **Operation of Hazardous Waste Storage Facilities without a RCRA Permit**

111. Paragraph 111 of the Complaint re-alleges Paragraphs 1 through 110 of the Complaint. Responses made by TPPRC (above) to those same allegations are hereby repeated.

112. Paragraphs 112 is denied. TPPRC's operations in Puerto Rico commenced on November 1, 2008.

113. TPPRC and 113 of the Complaint is denied. TPPRC's operations in Puerto Rico commenced on October 31, 2008.

114. Paragraph 114 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied. In addition, as explained in the response to paragraph 95 of the Complaint, TPPRC clarified to the EPA that the SJU Facility did not generate, in any calendar month 1,000 kg/mo (2,200 lbs/mo) or more of hazardous waste. Therefore, even though the EPA Form 8700-12, Biennial Report 2016, was marked as a Large Quantity Generator, it was clarified that TPPRC SJU Terminal was not conducting hazardous waste activities as a LQG since it did not generate the threshold quantities. It is so stated in the Footnote #1 of the Complaint per se. In addition, the TPPRC may have included in the Form 8700-12 the waste codes to describe

hazardous waste streams generated, but the intention in terms of the Slop Tank contents is to sell the product as commercial product to be reclaimed. However, if for any reason the product could not be sold to be reclaimed, then the codes are already included in the Form. The same situation applies to the St. Thomas Terminal since none of the facilities generate the threshold quantities to qualify as Large Quantity Generators unless some exceptional activities would occur (i.e., a tank clean up).

115. Paragraph 115 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
116. Paragraph 116 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
117. Paragraph 117 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
118. Paragraph 118 of the Complaint is denied in its misconstrued characterization that the one 8,000-gallon AST, known as the Slop Oil Tank, is used to store hazardous waste for the facility and that it was not marked with an accumulation date. Moreover, it is also denied that at least fifteen (15) 55-gallon containers located at the hazardous waste accumulation were not marked nor had visible for inspection their respective "accumulation dates". The allegation in paragraph 39 of the Complaint is that the dates were not legible and now it is being alleged that the dates were not visible, thus EPA's allegations are denied due to lack of information. In addition, EPA never issued a compliance inspection report detailing its findings to TPPRC.

119. Paragraph 119 of the Complaint is denied in its misconstrued characterization that the one 8,000-gallon AST, known as the Slop Oil Tank, is used to store hazardous waste for the facility and that it was not labeled or marked with the words "Hazardous Waste."
120. Paragraph 120 of the Complaint is denied. This allegation is speculative and based on statements that may have been inaccurate.
121. Paragraph 121 of the Complaint is denied. This allegation is speculative and based on statements that may have been inaccurate.
122. Paragraph 122 of the Complaint is denied in terms that the EPA is alleging that at least forty-one (41) 55-gallon containers without clear or legible markings indicating their "accumulation dates". TPPRC clarifies that the contents of the 55-gallon containers were generated as a result of the cleanup of one of the GBT's tanks. The containers were collected and properly disposed of by Clean Harbors on April 18, 2016. See Manifests, **Attachment 8**.
123. Paragraph 123 of the Complaint is denied. This allegation is speculative and based on statements that may have been inaccurate.
124. Paragraph 124 of the Complaint is denied. This allegation is speculative and based on statements that may have been inaccurate.
125. Paragraph 125 of the Complaint is denied.
126. Paragraph 126 of the Complaint is denied.

**Count 3**  
**Failure to Minimize Risk**



127. Paragraph 127 of the Complaint re-alleges Paragraphs 1 through 126 of the Complaint. Responses made by TPPRC (above) to those same allegations are hereby repeated.
128. Paragraph 128 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
129. Paragraph 129 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
130. Paragraph 130 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
131. Paragraph 131 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
132. Paragraph 132 of the Complaint is denied. The allegations made by the EPA that TPPRC allowed an unplanned release of hazardous waste are not correct and mischaracterized. TPPRC clarifies that the substance that was observed by the EPA is called "Red Dye", which is an additive used at the GBT classified as a commercial chemical product. Moreover, the product should not be referred to as an "unplanned release of hazardous waste," since the product is not a waste and only drips from the piping/ancillary equipment of the 550-gallon tank and is collected into absorbent materials (i.e., pampers) which are contained inside the tank's secondary containment. Moreover, there is no free product or liquid being released per se since the product itself

becomes rubberlike (i.e., like a coating) once it drips outside the piping/ancillary equipment.

133. Paragraph 133 of the Complaint is denied. Section 265.35 of 40 CFR provides that the owner “*must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.*” The STT’s waste storage area is a very small area in which drums are divided into hazardous waste and non-hazardous waste in an area with secondary containment, and with fire protection, spill control equipment and decontamination within reach. See, *STT Hazmat Storage Area, Attachment 2*. Aisle space is not really necessary because the area is so small that it is accessible to personnel from any surrounding position in case of an emergency. In addition, not all the containers stored in this area are necessarily classified as hazardous waste. The rule does not provide specific measures in terms of the space that needs to be allowed between containers, thus EPAs allegations are denied

134. Paragraph 134 of the Complaint is denied. The Guaynabo Terminal’s waste storage area was divided into hazardous waste storage area and non-hazardous waste storage area, a satellite area, decontamination area and spill control equipment with enough room for personnel to move about. The rule does not provide specific measures in terms of the space that needs to be allowed between containers, thus EPAs allegations is speculative.

135. Paragraph 135 of the Complaint is denied. The Guaynabo Terminal is equipped with portable fire extinguishers and spill control equipment, among other emergency response equipment as listed in the Facility's Response Plan. The regulations do not require that the equipment be located inside the storage area. The equipment in the GBT was adjacent and immediately accessible. See **Attachment 4**.
136. Paragraph 136 of the Complaint is denied. During its visit, the personnel from the EPA informally requested certain documents that were not available for immediate review. No further requests for documents in connection with the Guaynabo Terminal arrangements were made by the EPA; not even in the EPA e-mail communication of April 28, 2018. All the information in connection with the facility's layout, emergency contacts, evacuation routes, and others is contained in the Facility Response Plan. In addition, the GBT has been visited and inspected by the Fire Department on previous occasions to plan for emergency situations.
137. Paragraph 137 of the Complaint is denied. What the pertinent Section provides is that: *"[t]he owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations: (1) Arrangements 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; (2) 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; (3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and (4) 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.”* §265.37 does not make a specific requirement in terms of a written letter/notification, but indicates that arrangements must be made. In this regard, in Section 2 of the FRP, even though it was not delivered to the EPA, there is a vast list of emergency notification contacts, including the local police, fire department, hospitals and many others (i.e., civil defense, local radio stations, neighbors, etc.), which are available to coordinate emergency services. See STT FRP, **Attachment 3**. In addition, Section 4 of the FRP, even though it was not provided to the EPA Inspector, provides the contacts for the emergency response personnel for the company and of all contractors retained by the St. Thomas Terminal to assist in responding to emergency response activities. See STT FRP, **Attachment 3**.

Moreover, being that the STT is located within the Cyril E. King Airport in St. Thomas, the Fire Department visits the facility on a monthly basis to inspect all areas, review documents, and conduct joint drills to prepare for emergency situations. These inspections are required to be conducted at the Cyril E. King Airport in compliance with

strict Federal Aviation Administration requirements. Therefore, this allegation is denied.

138. Paragraph 138 of the Complaint is denied.

139. Paragraph 139 of the Complaint is denied.

#### **Count 4**

#### **Failure to Have Proper Contingency Plan or to Incorporate Hazardous Waste Management Provisions into the Facility Response Plan ("One Plan")**

140. Paragraph 140 of the Complaint re-alleges Paragraphs 1 through 139 of the Complaint. Responses made by TPPRC (above) to those same allegations are hereby repeated.

141. Paragraph 141 of the Complaint contains regulatory references which do not require an answer. If the allegations require a response, then, these are denied.

142. Paragraph 142 of the Complaint is denied. The date of March 17, 2016 is incorrect. The Facility Response Plans prepared and effective for the St. Thomas and the SJU Terminals at the time of the site visit, incorporate the relevant information equivalent to a RCRA Contingency Plan, including Hazard Identification and Evaluation. In addition, the FRPs contain all provisions necessary for a response in case of an emergency, including emergency notifications, response equipment list and personnel, equipment testing, evacuation plans and routes, immediate actions and others. Moreover, in addition to the FRPs effective for the facilities at the time of the inspection, in order to avoid any confusion with the EPA, a separate Contingency Plan was prepared for each facility.

143. Paragraph 143 of the Complaint is denied.

144. Paragraph 144 of the Complaint is denied.

**Count 5**

**Failure to Maintain Hazardous Waste Closed and in Good Condition**

145. Paragraph 145 of the Complaint re-alleges Paragraphs 1 through 144 of the Complaint. Responses made by TPPRC (above) to those same allegations are hereby repeated.

146. Paragraph 146 of the Complaint contains regulatory references which do not require an answer. If the allegations require a response, then, these are denied.

147. Paragraph 147 of the Complaint is denied due to its inconsistency with the EPA allegations in Paragraph 40 of the EPA Investigative Activities, in which the EPA alleges that there were at least three (3) open 55-gallon containers and not four (4). In addition, the EPA does not specify which drums the agency is referring to, nor the contents of the drums nor whether the drums were closed but not sealed, thus, the allegations are speculative and arbitrary. Moreover, the EPA never provided TPPRC with a Compliance Inspection Report providing details or photographs of its findings denoting a lack of imminent danger.

148. Paragraph 148 of the Complaint is denied in terms that the EPA is alleging that two of the 55-gallon hazardous waste containers were extremely corroded. The EPA does not specify which two drums were showing such signs, nor does it state if these drums were leaking or broken, thus the allegations are speculative and arbitrary. Moreover,

the EPA never provided TPPRC with a Compliance Inspection Report providing details or photographs of its findings denoting a lack of imminent danger.

149. Paragraph 149 of the Complaint is denied in terms that the EPA is alleging that four (4) of the 55-gallon hazardous waste containers were exhibiting signs of advanced corrosion. EPA allegations are inconsistent since it alleges in Paragraph 67 of the EPA Investigative Activities, that there were three (3) 55-gallon containers and not four (4) exhibiting signs of deterioration. Moreover, the EPA does not specify which drums were showing such signs, nor does it state if these drums were leaking or broken, thus the allegations are speculative and arbitrary. Moreover, the EPA never provided TPPRC with a Compliance Inspection Report providing details or photographs of its findings denoting a lack of imminent danger.

150. Paragraph 150 of the Complaint is denied.

151. Paragraph 150 of the Complaint is denied.

#### **Count 6**

#### **Failure to Comply with Universal Waste Management Requirements**

152. Paragraph 152 of the Complaint re-alleges Paragraphs 1 through 151 of the Complaint. Responses made by TPPRC (above) to those same allegations are hereby repeated.

153. Paragraph 153 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.

154. Paragraph 154 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.

155. Paragraph 155 of the Complaint contains regulatory references which do not require an answer. If the allegation requires a response, then it is denied.
156. Paragraph 156 of the Complaint is denied due to lack of information. It must be clarified that the lamps generated and accumulated at the SJU Terminal Mechanical Shop (as informed in TPPRC's response letter received by the EPA on June 14, 2016), were disposed of on May 2, 2016 as Non-Hazardous, Non-DOT Universal Waste Lamps. In addition, some of the lamps (green cap) accumulated at the Mechanical Shop pertained to the Philips Lighting ALTO Collection (Models F40T12/D/XTP and F96T12/DX), which are energy-efficient. As described in the Philips Lighting Alto literature, the "EPA's TCPL test is used to determine if an item can be managed as hazardous or non-hazardous waste. Philips ALTO and ALTO II lamps are TLCP compliant and can be managed as non-hazardous waste." See **Attachments 9**.
157. Paragraph 157 of the Complaint is denied. The EPA allegations that the "spent fluorescent lamps" were accumulated "side-by-side throughout the Mechanical Shop" is inaccurate and mischaracterized. Some of the lamps were duck-taped together and placed high on top of the concrete storage area to prevent breaking; others were placed next to the taped lamps (high on top of the concrete storage area) inside the lamp casings to prevent breaking. Two other lamps were duck-taped to a column right next to the concrete storage. The lamps were not loosely located throughout the Mechanical Storage area as the EPA incorrectly implies.



158. Paragraph 158 of the Complaint is denied. TPPRC clarifies that the broken residues observed on the floor seem to pertain to the lamp casings and not the lamps per se.

159. Paragraph 159 of the Complaint is denied due to lack of information. Mr. Pedro Rodríguez is no longer the SJU Terminal Supervisor and TPPRC has not been able to verify his statements regarding the accumulation time of the lamps.

160. Paragraphs 160 of the Complaint is denied.

161. Paragraph 161 of the Complaint is denied.

#### **I. PROPOSED CIVIL PENALTY**

This entire section is denied. Respondent hereby incorporates by reference all applicable averments submitted in the answers provided in the sections above. TPPRC asserts that the proposed civil penalty is contrary to law and unwarranted. It is also excessive and in violation of the criteria established in Section 3008(a)(3) of RCRA and its pertinent regulations, and in violation of TPPRC's due process rights under Amendment V of the Constitution of the United States, and of section 558(b) of the Administrative Procedure Act, 5 U.S.C. Sec. 558(b). The factual analysis used to establish the proposed civil penalty for the alleged violations fails to take into consideration the nature, circumstances, degree of seriousness of the alleged violations, degree of actual threat to human health or the environment, TPPRC's good faith efforts to cooperate with EPA and others. More so, when the proposed civil penalty is for alleged violations occurred more than two (2) years ago, three in the case of the STT, without TPPRC even having the benefit of receiving a copy of the compliance inspection report or photographs explaining the alleged violations so that TPPRC could have taken (and reported to

the EPA) the actions taken to correct such allegations, if necessary. This disregard clearly denotes that the actions did not involve anything of gravity or of actual threat to human health of the environment. Consideration of history of non-compliance against TPPRC is not applicable, nor warranted in this case, and the calculations of the penalty on every count are incorrect.

## **II. COMPLIANCE ORDER**

Paragraphs 1 through 10 of the Compliance Order will be addressed once the Compliance Order becomes effective following the specific deadlines established in such Section II of the Complaint.

## **III. NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES**

This Section of the Complaint contains a conclusion of law and Complainant's request for the establishment of additional civil penalties for each day of continued non-compliance, which do not require an answer. If the allegation requires a response, then, it is denied.

## **IV. PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

This section contains instructions provided by EPA pursuant to the "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective actions Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, which do not require an Answer.

### **A. Answering the Complaint**

TPPRC is hereby submitting its response to the Complaint with the intention of contending that the proposed penalty is inappropriate. The response is being file by TPPRC as instructed.

### **B. Opportunity to Request a Hearing**

TPPRC hereby requests a formal hearing before an Administrative Law Judge pursuant to 40 C.F.R. Part 22, and request that every possible effort be made to have the hearing in Puerto Rico, since most the witnesses, documents and two of the sites in question are located in Puerto Rico, and St. Thomas site is nearby. The purpose of the hearing is to contest the Complaint, the proposed penalty, and the matters of law and material facts that were not admitted above, and which were set forth in the Complaint. TPPRC reserves the right to present additional factual circumstances, arguments, and Affirmative Defenses that constitute the grounds for defense of the claims made in the Complaint, if and when such circumstances or arguments become known to TPPRC through discovery or other means. In addition, it reserves the right to modify its responses if additional information is obtained that clarify any particular allegations of TPPRC or the Complainant. Therefore, by taking this opportunity to request a hearing, we understand that the Compliance Order shall not automatically become final.

**C. Failure to Answer**

TPPRC is hereby submitting its response to the Complaint in a timely manner.

**D. Filing of Documents Filed After the Answer**

This section contains instructions provided by EPA which do not require an answer. However, all documents shall be filed as per EPA instructions.

**E. Exhaustion of Administrative Remedies**

This section contains instructions provided by EPA which do not require an answer. However, the appeal of an adverse initial decision shall be filed as per EPA instructions, if deemed necessary.

## **V. INFORMAL SETTLEMENT CONFERENCE**

TPPRC will take the opportunity to hold an Informal Settlement Conference with Carolina Jordán-García, Esq., Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 2, Caribbean Environmental Protection Division, Office of Regional Counsel-Caribbean Team, and any other EPA representatives, in order to comment on the charges made in the Complaint, and provide additional information relevant to the disposition of the matter, including: 1) actions TPPRC has taken to correct any or all of the alleged violations; 2) any information relevant to the Complaint's calculation of the proposed penalty; 3) the effect the proposed penalty will have on TPPRC's ability to conduct business; and/or 4) any other special facts or circumstances TPPRC wishes to raise. Therefore, TPPRC hereby pursues, simultaneously with the request for a hearing, an informal conference procedure.

## **VI. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

TPPRC has opted for submitting a response to the Complaint with the intention of contending that the proposed penalty is inappropriate, and shall not pursue a resolution of this proceeding without exercising its right for a hearing or conference.

## **VII. AFFIRMATIVE DEFENSES**

1. TPPRC re-alleges paragraphs 1 through 161 above and hereby reiterates all the responses included with this Answer as part of the Affirmative Defenses.
2. The proposed penalty is excessive, unreasonable, arbitrary and capricious, and constitutes an abuse of discretion, unwarranted and contrary to law because the factual analysis used by Complainant to establish the proposed civil penalty for the

alleged violations is erroneous and fails to take into consideration the nature, circumstances, degree of seriousness of the alleged violations, degree or actual threat to human health or the environment, and Respondent's good faith efforts to cooperate with EPA. Consideration of history of non-compliance against TPPRC is not applicable, nor warranted in this case, and the calculations of the penalty on every count are incorrect.

3. The Complaint and the proposed penalty are contrary to law, arbitrary and capricious, an abuse of discretion and unwarranted given TPPRC's activities substantially complied with the EPA rules and did not cause harm to persons or the environment. Furthermore, TPPRC acted in good faith and cooperated fully with EPA representatives, and continues to monitor its disposal of hazardous wastes, if any.
4. The Complaint and proposed penalty are contrary to law, arbitrary and capricious, an abuse of discretion and unwarranted because TPPRC has not been informed or provided with any detail, supporting documentation or information on how EPA calculated the proposed penalty.
5. The Complaint and proposed penalty are contrary to law, arbitrary and capricious, an abuse of discretion and unwarranted because TPPRC was never provided with a Compliance Inspection Report informing Respondent of its observations during the visits performed at the SJU, GBT and the St. Thomas Terminal
6. The Complaint and proposed penalty are contrary to law, arbitrary and capricious, an abuse of discretion and unwarranted because there was no imminent danger to the

environment or human health and the EPA failed to take any actions within a span of two years in the case of the GBT and the SJU, and three years in the case of the STT.

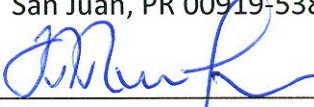
7. Respondent is not a Large Quantity Generator.
8. Respondent is no a TSD facility under RCRA.
9. EPA has not calculated the proposed penalty in accordance with the 2003 RCRA Civil Penalty Policy.
10. The Compliance Order is unwarranted and unnecessary.
11. EPA did not follow EPA internal and/or formal procedures to conduct inspections under RCRA for the case at hand, and did not provide TPPRC any due process.
12. Respondent reserves the right to amend and raise additional affirmative defenses at any time, and amend its response.

I CERTIFY: that on this same date I sent, via next day service, **an original and copy** to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, Room 1631, New York, New York 10007-1866, and **a true and exact copy** of this motion by hand instead of certified mail, to Carolina Jordán-García, Esq., Assistant Regional Counsel, as agreed with Mrs. Jordán-García via telephone conference, at Caribbean Environmental Protection Agency, U.S. Environmental Protection Agency, Region 2, City View Plaza 2, Suite 7000, #48 PR-165 km 1.2, Guaynabo, Puerto Rico 00968-8069.

Respectfully submitted this July 19, 2018

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By: \_\_\_\_\_

  
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