

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 16-2641
)	
TOTAL PETROLEUM PUERTO RICO)	
CORPORATION,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Clean Water Act (the “Act”), 33 U.S.C. § 1319(b) and (d), for injunctive relief and civil penalties against Total Petroleum Puerto Rico Corporation (“Total” or “Defendant”). Specifically, Total has discharged pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), has and continues to discharge stormwater associated with industrial operations through a point source (“Outfall 002”) without a National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), has violated and continues to violate certain terms and conditions of a NPDES permit issued to Total by EPA pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this judicial district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1395 because Total is located, and the alleged violations occurred, in this judicial district.

4. Notice of the commencement of this action has been given to the Commonwealth of Puerto Rico pursuant to 33 U.S.C. § 1319.

5. The Attorney General of the United States is authorized to appear and represent the United States in this action pursuant to Section 506, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

PARTIES

6. Plaintiff is the United States of America, acting by the authority of the Attorney General and on behalf of the Administrator of the EPA.

7. Defendant Total is a corporation duly organized under the laws of the Commonwealth of Puerto Rico, with its principal office located at Santander Tower, Suite 1508, Tabonuco Street B-7, Guaynabo, Puerto Rico 00968. Total is engaged in the storage and wholesale distribution of petroleum products, such as gasoline, diesel, motor oil, jet fuel and lubricants.

8. On May 8, 2006, EPA renewed the NPDES permit No. PR0000787 for the then named permittee, ESSO Standard Oil Company (“ESSO”) (“Permit”). This Permit governed discharges of pollutants through outfall serial number 001 (“Outfall 001”) into an unnamed creek

tributary of San Juan Bay from the Guaynabo Bulks Fuel Terminal located at Road PR-28, Km. 0.8, Pueblo Viejo Ward, Guaynabo, Puerto Rico 00965 (“Facility”), became effective on July 1, 2006, and was set to expire on June 30, 2011.

9. On September 24, 2008, ESSO sent a letter notifying EPA of its intent to transfer ownership of the Facility to Total. The letter also requested a minor NPDES permit modification to change the name of the owner/operator of the Facility and thus, the named permittee on the NPDES permit.

10. On June 3, 2011, EPA issued the minor NPDES permit modification. Total Petroleum Puerto Rico, Corp. became the named permittee for the issued NPDES permit, which now governed discharges of pollutants through outfall serial number 001 into an unnamed creek tributary of San Juan Bay from the Facility.

11. At all times relevant to this Complaint, Total has owned and/or operated and continues to own and operate the Facility, including the stormwater collection and discharge system point source outfalls, and related appurtenances at which the Act violations alleged in this Complaint occurred and continue to occur.

STATUTORY AND REGULATORY BACKGROUND

12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants into navigable waters of the United States, except, *inter alia*, in compliance with the requirements of this section and as authorized by, and in compliance with, a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

13. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, a “corporation.”

14. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source”

15. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term “pollutant” to include solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, chemical and industrial wastes, heat, and biological materials discharged into water.

16. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the waters of the United States, including its territorial seas. Part 122 of Title 40 of the Code of Federal Regulations (“C.F.R.”), promulgated under the Act to regulate the NPDES permit program, define the term “waters of the United States” to include, among other things: 1) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; 2) all interstate waters; 3) all other waters such as intrastate lakes, rivers and streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; 4) tributaries of waters of the United States; and 5) certain wetlands (including wetlands adjacent to these waters). 40 C.F.R. § 122.2.

17. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.”

18. EPA regulations define “facility” as “any NPDES ‘point source’ or any other facility . . . (including land or appurtenances thereof) that is subject to regulation under the NPDES program.” 40 C.F.R. § 122.2.

19. 40 C.F.R. § 122.26(b)(14) defines “storm water discharge associated with industrial activity,” in relevant part to include “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14).

20. Pursuant to 40 C.F.R. § 122.26(b)(14)(viii), “Transportation facilities classified as Standard Industrial Classification . . . 5171” are those facilities containing “vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations . . . are associated with industrial activity.”

21. Pursuant to 40 C.F.R. § 122.26(c)(1), “[d]ischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.”

22. Section 502(11) of the Act, 33 U.S.C. § 1362(11), defines the term “effluent limitation” as “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources in navigable waters”

23. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA (“Administrator”) may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, provided that all discharges meet the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, or such other conditions as the Administrator determines are necessary to carry out the provisions of the Act. Typically such

permits include effluent limitations, monitoring and reporting requirements, as well as operating and maintenance requirements.

24. Section 402(a)(2) of the Act, 33 U.S.C. § 1342(a)(2), provides that “[t]he Administrator shall prescribe conditions for such permits to assure compliance with the requirements of [Section 402(a)(1)], including conditions on data and information collection, reporting, and such other requirements as the Administrator deems appropriate.”

25. Pursuant to 40 C.F.R. § 122.41(e), a standard condition in all NPDES permits, including the NPDES permit governing the facility at which violations are alleged herein, states that “[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit.”

26. Pursuant to 40 C.F.R. § 136, a Chain of Custody form must be completed and the listed procedures followed to comply with a NPDES Permit when monitoring discharges.

27. Pursuant to 40 C.F.R. § 122.41(l), “[m]onitoring results shall be reported at the intervals specified elsewhere in th[e] permit . . . [and] [m]onitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting result of monitoring . . . disposal practices.”

28. Section 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), states that “the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such

manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require”

29. Section 402(i) of the Act, 33 U.S.C. § 1342(i), states that nothing in Section 402 of the Act shall limit the authority of EPA to take enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

30. Section 402(k) of the Act, 33 U.S.C. § 1342(k), provides that conforming with a Section 402 permit shall be deemed compliance with Section 301 for the purposes of satisfying Section 309 of the Act.

31. Section 309(a)(3), (b) and (d) of the Act, 33 U.S.C. § 1319(a)(3), (b) and (d), authorizes the Administrator to commence a civil action for injunctive relief and for civil penalties for each violation of Section 301 of the Act, 33 U.S.C. § 1311, or any permit condition or limitation implementing, *inter alia*, Section 301 of the Act, 33 U.S.C. § 1311, and contained in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

32. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2641 note: Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note: Pub. L. 101-134, enacted April 26, 1996, 110 Stat. 1321), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (§ 701 of Pub. L. 114-74 enacted Nov. 2, 2015), EPA promulgated the Civil Monetary Penalty Inflation Adjustment Rule effective August 1, 2016, 81 Fed. Reg. 43091. Under that rule, any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or the terms or conditions of an NPDES permit shall be subject to civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, up to \$37,500 per day for each violation occurring after January 12, 2009, and \$51,570 per day for each violation occurring after

November 2, 2015. 61 Fed. Reg. 69,364 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 73,345 (Dec. 11, 2008); 81 Fed. Reg. 43,091 (July 1, 2016).

PERTINENT PROVISIONS OF NPDES PERMIT PR0000787

33. Part I, Table A-1, and Part I.A.10 of the NPDES permit (“Permit”) require Total to estimate and report the flow of the stormwater discharges through Outfall 001 in its Discharge Monitoring Reports (“DMRs”) in accordance with the method approved by the Puerto Rico Environmental Quality Board (“EQB”).

34. Part I.A.7 of the Permit requires that the flow measuring device at Outfall 001 be calibrated as well as properly maintained, and that records of calibration and maintenance must be kept by Total.

35. Part I.A.8 of the Permit requires the location selected to measure the flow from Outfall 001 be free from vegetation, debris, and trash, and be readily accessible at any time.

36. Part I.A.11.c of the Permit requires the modification of the Stormwater Pollution Prevention Plan (“SWPPP”) whenever changes at the Facility materially increase the potential for releases of pollutants or when situations occur that reflect that the plan is inadequate. These modifications must be submitted to EQB within ninety (90) days of the date when such changes occur.

37. Part I.A.12 of the Permit requires that Total shall comply at all times with all provisions, measures, or practices included in the SWPPP.

38. Part I.A.13.A of the Permit requires Total to sample measurable storm events.

39. Part I.A.13.C of the Permit requires that Total provide a cover letter detailing the conditions under which the stormwater samples were taken or a certification both

when it was not possible to satisfy the sampling protocol and when there was no appreciable discharge during normal business hours for a particular month.

40. Part I.B.2.b of the Permit requires that the DMRs report the results of the monitoring exercises for the previous month, and are postmarked no later than the 28th day of the month following the completed reporting period.

41. Part.II.B.5 of the Permit requires that Total shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this Permit.

42. Part II.B.10.c of the Permit requires that the records of monitoring information include the follow: 1) the date, exact place, and time of sampling or measurement; 2) the individual(s) who performed the sampling or measurements; 3) the date(s) analyses were performed; 4) the individual(s) who performed the analyses; 5) the analytical techniques or methods used; 6) the quality assurance information specified in Part I of this Permit; and 7) the results of such analyses.

43. Part II.B.10.d. of the Permit requires that monitoring shall be conducted according to test procedures approved under 40 C.F.R. Part 136.

GENERAL ALLEGATIONS

44. Total's management of thousands of barrels storing petroleum-derived products at the Facility creates a risk that numerous pollutants will be discharged through the Facility's storm water collection and discharge system ("SW System"). Such pollutants include, but are not limited to, sediments, oil and grease, lubricants, additives, hydrocarbons, phenols, surfactants, solids, and Chemical Oxygen Demand ("COD"). These pollutants can harm aquatic

ecosystems, diminish water quality, and impair human health, by destroying photosynthetic organisms and fish populations, or by causing injurious or fatal stress to aquatic life through the reduction of oxygen levels and the increased presence of turbidity in the local environment.

45. Total is a “person” within the meaning of the Section 502(5) of the Act, 33 U.S.C. § 1362(5).

46. The Facility is best classified as a Petroleum Bulk Station under the Standard Industrial Classification Code 5171.

47. Total’s Outfall 001 and Outfall 002 are “point sources” which “discharge[] pollutants” into “navigable waters,” all within the respective definitions provided in § 502(14), (12), and (7) of the Act, 33 U.S.C. § 1362(14), (12), and (7).

48. The Facility is operated pursuant to NPDES Permit No. PR0000787 issued by EPA under authority of Section 402(a) of the Act, 33 U.S.C. § 1342(a), and the terms of the Permit were and are in full force and effect during the relevant time period of the violations alleged herein. Total’s coverage under the Permit became effective as of June 3, 2011, and it was scheduled to expire on June 30, 2011, but the Permit has been administratively extended and remains in full force and effect pursuant to 5 U.S.C. § 558(c) and 40 C.F.R. § 122.6.

49. At all times relevant to this Complaint, Total was and is the named permittee for the Permit authorizing discharges from Outfall 001 at the Facility.

50. The Permit issued to Total authorizes the discharge of pollutants into an unnamed creek tributary of San Juan Bay from Outfall 001. The Permit specifies that the discharge through Outfall 001 shall consist of firewater test/hydrant flush and stormwater.

51. In addition, the Permit sets effluent limitations for various pollutants contained in the effluent from Outfall 001 and requires Total to monitor for those pollutants at

specified frequencies and using specified sampling methodologies, to report its findings, and to satisfy several special and general conditions.

52. The Permit further imposes operation and maintenance requirements upon the Facility, namely that Total shall at all times properly operate and maintain all facilities and systems of treatment and control, including related appurtenances, that are installed or used to achieve compliance with the terms of the Permit and all applicable Rules and Regulations.

53. The Permit further requires Total to comply at all times with the provisions, measures, and practices of the Facility's SWPPP.

54. Pursuant to the Permit, Total is also required to submit monthly DMRs to EPA. Each DMR must include monitoring results obtained during the previous month and the sampling procedures used in compiling the data for the DMRs must satisfy the "When Flow Occurs" Special Condition in Part I.A.13 of the Permit.

55. At all times relevant to this Complaint, Total owned and operated Outfall 002 at the Facility without ever having submitted a Notice of Intent ("NOI") for coverage under EPA's 2008 NPDES Storm Water Multi-Sector General Permit ("MSGP"), and Total never submitted an application for coverage under an individual NPDES permit for this discharge point source.

SPECIFIC ALLEGATIONS

56. The stormwater that runs onto the Facility as well as the runoff from the Facility collects into secondary containments, surface trenches, catch basins, sumps, drains, curbs, pipelines, swales, and oil/water separators, which are the main components of the stormwater collection and discharge system ("SW System").

57. On or about November 28, 2010, 25,000 gallons of unleaded gasoline spilled at the Facility.

58. On or about December 16, 2010, EPA enforcement officers performed a Compliance Evaluation Inspection (“Inspection”) to determine Total’s current compliance with the Act and the Permit.

59. During the Inspection, the enforcement officers requested documents to determine Total’s compliance with the monitoring and reporting requirements of the Permit. On or about December 23, 2010, EPA received the requested documents and subsequently determined the existence of several instances of noncompliance. These included improper sampling protocols and certifications; absent or incomplete DMR submissions; improper Chain of Custody procedures and documentation; incomplete or absent flow measurement and rain gauge data; and the failure to maintain legible SWPPP documentation and to properly implement SWPPP requirements.

60. The enforcement officers also noted that Total’s representatives were unfamiliar with the SW System and did not know where stormwater discharged after it reached a particular manhole. This manhole diverted the stormwater to the northern end of the Facility, near the Lube Warehouse.

61. EPA enforcement officers observed one discernible, confined, and discrete discharge point located on the northeast side of Lube Warehouse, Outfall 002. The EPA enforcement officers observed another discernible, confined, and discrete discharge point located on the northwest side of the Facility. Both outfalls act as discharge points of the SW System, and are “point source[s]” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14). The unnamed creek tributary runs parallel to the northern boundary of the Facility, and flows into San

Juan Bay, a “navigable water” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

Thus, all instances where stormwater, and/or other industrial wastewater, discharge from Outfall 001 or Outfall 002 and reach this waterbody, constitute a “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12).

FIRST CLAIM FOR RELIEF
(NPDES Permit Effluent Limit Violations)

62. The allegations set forth in Paragraphs 1 through 61 are realleged and incorporated herein by reference.

63. On numerous occasions since at least in or about January 2009, until the present, Total discharged stormwater through Outfall 001 into navigable waters in excess of the effluent limitations set forth in Part I, Table A-1 of the Permit.

64. Total reported violations of Permit effluent limitations for the following water quality parameters: 1) Color; 2) COD; 3) Surfactants; 4) Total Suspended Solids; 5) Fluoride; and 6) Temperature.

65. Each discharge of a pollutant in excess of an effluent limitation contained in the Permit constitutes a violation of the Permit and of Section 301 of the Act, 33 U.S.C. § 1311.

66. On each day that Total violated more than one of the effluent limitations contained in the Permit, each exceedance of an effluent limitation constitutes a separate violation of the Permit and of Section 301 of the Act, 33 U.S.C. § 1311.

67. Upon information and belief, Total will continue to violate the effluent limits contained in the Permit unless restrained by this Court.

68. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Total is liable for civil penalties for each day for each of these violation of the Act.

SECOND CLAIM FOR RELIEF
(Violations of Flow Measurement Requirements)

69. The allegations set forth in Paragraphs 1 through 68 are realleged and incorporated herein by reference.

70. On several occasions, from at least in or about January 2009, until at least in or about September 2013, Total failed to measure and/or submit accurate flow measurements in its DMRs. These failures include, but are not limited to, the following:

- a. Designating flow using improper measurement units;
- b. Reporting the flow in the improper column; and
- c. Submitted DMRs without any flow measurement or calculations present.

71. From at least on or about January 2009, until the present, Total failed to: conduct sampling activities; monitor its discharges; and measure flow at a representative sampling location for Outfall 001 in accordance with its permit conditions. From at least on or about July 2011, until the present, Total was unable to measure flow because the sampling point for Outfall 001 was flooded, which caused the flow measurement equipment to become inoperable. Total also hired a professional engineering firm, “Technical Consulting Group,” which performed a Hydrologic-Hydraulic Study (“H/H Study”) to review its SW System. The H/H Study concluded that the “invert of the outfall pipe of the original Discharge 001 is located below the water surface of the man-made stormwater channel, even during dryweather [sic] conditions. The effects will be accentuated during wet weather. Under such circumstances, water from the man-made channel may enter the internal storm sewer, and combine with stormwaters

from the [Guaynabo Bulk Terminal]. If this occurs, samples collected from Discharge 001 will not be representative, since water from external sources may be present. For this reason, absence of non-stormwater flows in the internal sewer system cannot be fully certified at the present time.”

72. In continuing to operate Outfall 001 without complying with Part I, Table A-1 and Part I.A.10 of the Permit, each stormwater discharge constitutes a violation of Section 301 of the Act, 33 U.S.C. § 1331.

73. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Total is liable for civil penalties for each day for each of these violation of the Act.

THIRD CLAIM FOR RELIEF
(Violations of Sample Collection Procedures and Monitoring Records Information and Records Retention Requirements)

74. The allegations set forth in Paragraphs 1 through 73 are realleged and incorporated herein by reference.

75. The regulations found at 40 C.F.R. Part 136 include Chain of Custody procedures that Total must follow to comply with the Permit when monitoring its discharges through Outfall 001.

76. On several occasions, from at least on or about November 2008, and continuing to the present, Total failed to adhere to the sample collection procedures and monitoring records information and record retention requirements set forth in the Permit. This failure is exemplified by, but is not limited to, the following acts or omissions:

- a. Total’s failure to sample during certain months;
- b. Total’s repeated failure to certify that it was not possible to satisfy the sampling protocol and that there was no appreciable discharge during

normal business hours for a particular month, as required by Part I.A.13.C of the Permit;

- c. Total's failure to sample measurable storm events during certain months, as required by Part I.A.13.A of the Permit;
- d. Total's failure to analyze and report certain pollutant parameters as required by Part I, Table A-1 of the Permit; and
- e. Total's failure to properly complete several Chain of Custody forms and submit them in accordance with the procedures set forth in 40 C.F.R. § 136.

77. Total had also provided a document entitled, "Muestreo y Preservación de Muestras de Agua de Lluvia," which applies to Total's operation of the Facility. The title translates to, "Sampling and the Preservation of Rainwater Samples." However, this document did not provide a site-specific protocol for the use of precipitation data, or the collection of stormwater discharge samples following Part I.13 of the Permit.

78. In continuing to operate Outfall 001 without complying with these sampling collection procedures and monitoring records information and record retention requirements of the Permit, each day that a stormwater sample should have been collected or otherwise exempted from monitoring constitutes a violation of Section 301 of the Act, 33 U.S.C. § 1331.

79. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Total is liable for civil penalties for each day for each of these violation of the Act.

FOURTH CLAIM FOR RELIEF
(Violation of Reporting Requirements)

80. The allegations set forth in Paragraphs 1 through 79 are realleged and incorporated herein by reference.

81. On several occasions since at least on or about January 2009, and until at least on or about July 10, 2013, Total failed to report conditions under which the stormwater samples were taken, to submit DMRs by the deadline set forth in the Permit, to provide a sample measurement, and to report sampling data in DMRs even though laboratory data was obtained, in violation of the Permit, 40 C.F.R. § 122.41(l), and Sections 301, 308, and 402 of the Act, 33 U.S.C. §§ 1311, 1318, and 1342.

82. The DMRs must include the results of the monitoring exercises for the previous month, be postmarked no later than the 28th day of the month following the completed reporting period, and require a cover letter detailing the conditions under which the stormwater samples were taken.

83. In continuing to operate Outfall 001 without complying with the reporting requirements of the Permit, each stormwater discharge that is required to be monitored under the Permit constitutes a violation of Section 301 of the Act, 33 U.S.C. § 1331.

84. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Total is liable for civil penalties for each day for each of these violation of the Act.

FIFTH CLAIM FOR RELIEF
(Violation of SWPPP Requirements)

85. The allegations set forth in Paragraphs 1 through 84 are realleged and incorporated herein by reference.

86. From at least on or about November 1, 2008, until at least on or about May 16, 2012, Total failed to timely amend and modify the SWPPP. In addition, from on or about November 1, 2008, and continuing until the present time, Total has failed to implement several of its SWPPP provisions at the Facility.

87. On or about November 28, 2010, the Vapor Recovery Unit at the Facility spilled about 25,000 gallons of unleaded gasoline. This release reached Total's SW System and Outfall 001, and an oily sheen was observed immediately downstream from Outfall 001.

88. On or about September 2, 2011, Total acknowledged in a letter that due to its current lubricant sales, petroleum storage drums were required to be held in open areas. Total indicated that it would modify the SWPPP to include Best Management Practices ("BMPs") to address this situation.

89. On December 16, 2011, the enforcement officers noted several deficiencies in the implementation of the SWPPP including, but not limited to, the following:

- a. An illegible drainage map;
- b. Liquid storage containers without permanent or temporary secondary containment;
- c. A failure to identify material storage areas on the drainage map;
- d. A failure to implement various Best Management Practices ("BMPs") for materials storage in parking areas and open areas, as well as for equipment housed outside containment areas that risk spills of petroleum product;
- e. A failure to take preventative measures against the recurring presence of oil sheen in manhole #11; and

- f. A failure to document Comprehensive Site Compliance Evaluations for the 2008, 2009, and 2010 calendar years.

90. Total did not modify its SWPPP between the period of February 12, 2010 and May 16, 2012, despite changed petroleum storage conditions and a spill of 25,000 gallons of unleaded gasoline at the Facility.

91. Total's failure to implement its SWPPP at the Facility was recently documented on February 20, 2013. On this date, EPA held a status meeting where it observed the absence of structural BMPs and good housekeeping practices at several areas of the Facility. Total's noncompliance with SWPPP provisions continues to the present time.

92. Each day Total continued to operate Outfall 001 without timely modifying its SWPPP and complying with the provisions of the SWPPP, as required by the Permit, constitutes a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1331.

93. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Total is liable for civil penalties for each day for each of these violation of the Act.

SIXTH CLAIM FOR RELIEF
(Violation of Operation and Maintenance of the SW System)

94. The allegations set forth in Paragraphs 1 through 93 are realleged and incorporated herein by reference.

95. From at least on or about November 1, 2008 until at least on or about May 15, 2012, Total failed to operate and maintain the proper functioning of the SW System, including the discharge and sampling points, and did not maintain and calibrate the flow measuring device for Outfall 001.

96. On approximately December 16, 2010, the EPA enforcement officers noted that the flow measuring device had not been calibrated and that a significant amount of sediments and other solid materials had accumulated in the SW System.

97. From at least on or about July 2011, until the present, Total was unable to measure flow because the sampling point for Outfall 001 was flooded and the flow measurement equipment could not operate under these flooded conditions.

98. The operations and maintenance deficiencies at the Facility constitute a failure to meet a condition or limitation of the Permit as required by 40 C.F.R. § 122.41(e) and violate Section 301 of the Act, 33 U.S.C. § 1331.

99. Upon information and belief, Total will continue to violate the operations and maintenance requirements contained in the Permit unless restrained by this Court.

100. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Total is liable for civil penalties for each day for each of these violation of the Act.

SEVENTH CLAIM FOR RELIEF
(Discharges Without a NPDES Stormwater Permit)

101. The allegations set forth in Paragraphs 1 through 100 are realleged and incorporated herein by reference.

102. On numerous occasions, from at least on or about November 1, 2008, until June 30, 2013, Total operated the Facility with an unpermitted point source discharge Outfall 002.

103. The H/H Study concluded that “[c]apacities of several key segments of the internal storm sewer system are insufficient to handle flows caused by relatively frequent events, such as one year storms. During more severe storms, problems will worsen.”

104. By routinely engaging in the “discharge of pollutants” to navigable waters from the Facility without coverage under a general or individual NPDES permit, Total violated Section 301 of the Act, 33 U.S.C. § 1311.

105. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), Total is liable for civil penalties for each day for each of these violation of the Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, requests that the Court enter judgment on behalf of the United States and against Total as follows:

A. That Total be permanently enjoined from discharging or causing the discharge of stormwater associated with industrial activity, or other pollutants into any waters of the United States except in compliance with the Act;

B. That Total be assessed, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), a civil penalty for each day of each violation at the Facility of Sections 301(a), 308, and 309(a) of the CWA, 33 U.S.C. §§ 1311(a), 1318, and 1319(a);

C. That Total be required to comply with the effluent limitations set forth in Part I, Table A-1 of the Permit at all times;

D. That Total be required to measure and/or submit accurate flow measurements by furnishing the correct units, calculations, and reported values in its DMR submissions, in a manner that complies with the Permit, and by ensuring its monitoring points are not flooded and are well-suited to render representative samples;

E. That Total be required to adhere to the sample collection procedures and monitoring records information and record retention requirements set forth in the Permit including, but not limited to, sampling of measurable storm events, providing the appropriate certifications in

instances when the sampling protocol could not be followed, and fully discharging the requirements of the Chain of Custody Records;

F. That Total be required to comply with the reporting requirements under the Permit by reporting the conditions under which its stormwater samples were taken, submitting DMRs by the deadline set forth in the Permit, providing accurate sample measurements, and furnishing all available and pertinent sampling data in its DMRs;

G. That Total be required to maintain its SWPPP and update it when necessary, and implement its provisions to ensure all requisite BMPs and good house-keeping practices are in place throughout the entire Facility;

H. That Total be required to develop a site-specific protocol for the use of precipitation data and the collection of stormwater discharge samples that complies with Part I.13 of the Permit;

I. That Total be required to keep, maintain and calibrate a flow measuring device; and the SW System remains reasonably clear of sediments and other solid materials and backflow from the unnamed creek that may impede monitoring, inspection and data collection; and

J. That the United States be awarded costs and disbursements in this action; and

K. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Dated this 13th day of September, 2016.

Respectfully submitted,

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

/s/ Jerome W. MacLaughlin
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