

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
)	Civil Action No. 3:22-cv-1038
)	
v.)	
)	
)	
TO GO STORES, LLC)	
)	
Defendant.)	
_____)	

NOTICE OF LODGING OF CONSENT DECREE

PLEASE TAKE NOTICE that the United States of America is lodging with the Court a Consent Decree between the United States, on behalf of the United States Environmental Protection Agency, and To Go Stores, LLC. The proposed Consent Decree resolves the United States’ claims against the Defendant in the above-captioned action.

In accordance with 28 C.F.R. § 50.7, the United States must publish a notice in the Federal Register that the settlement has been lodged with the Court. For a period of 30 days from the date of such publication, the public has an opportunity to submit comments relating to the proposed Consent Decree. After the close of the public comment period, the United States will evaluate any comments received and will move for entry of the settlement, unless the comments disclose facts or considerations which indicate that the proposed Decree is inappropriate, improper or inadequate. Accordingly, the United States requests that the Court take no action on the proposed Consent Decree until the United States notifies the Court that it supports entry of the Decree after expiration of the public comment period.

Respectfully submitted,

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division

s/ Natalie G. Harrison
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CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action, concurrently with this Consent Decree, against Defendant To Go Stores, LLC (“TGS”), to obtain injunctive relief and assessment of civil penalties for violations of the Solid Waste Disposal Act, as amended and commonly referred to as the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991 *et seq.* (the “Act” or “RCRA”), and the federally approved and enforceable Puerto Rico Underground Storage Tank Regulations (“PRUSTR”), regarding numerous “underground storage tanks” or “USTs” and “UST systems” that are owned and/or operated by TGS at the Facilities in the Commonwealth of Puerto Rico (“Puerto Rico”);

WHEREAS, the Complaint alleges that TGS at certain Facilities identified in Appendix A of this Consent Decree failed to satisfy numerous requirements mandated by Subtitle I of RCRA and the PRUSTR in Puerto Rico, including TGS’s failure to meet its legal obligation to: (1) use spill prevention equipment; (2) use overfill prevention equipment; (3) operate and maintain corrosion protection; (4) inspect cathodic protection systems; (5) provide release detection for USTs; (6) provide release detection for pressurized piping; (7) secure monitoring wells; (8) test automatic line leak detectors; (9) equip pressurized lines with leak detectors; (10) report suspected releases; (11) investigate suspected releases; and (12) obtain financial assurance;

WHEREAS, TGS does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest; and

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action as provided by 28 U.S.C. §§ 1331, 1345, and 1355, and Section 9006(a)(1) of RCRA, 42 U.S.C. Section 6991e(a)(1), and over the Parties.

2. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a) because TGS is located in this district and the events or omissions giving rise to this action occurred in this district.

3. For purposes of this Decree, or any action to enforce this Decree, TGS consents to the Court's jurisdiction over this Decree and any such action and over TGS, and consents to venue in this judicial district.

4. For purposes of this Consent Decree only, TGS agrees that the Complaint states claims upon which relief may be granted pursuant to Section 9006 of RCRA, 42 U.S.C. Section 6991e.

II. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States and upon TGS and any successors, assigns, or other entities or persons otherwise bound by law, except as provided by Paragraphs 6 and 7.

6. Subject to Paragraph 7, a transfer of ownership or operation of a Facility identified in Appendix A relieves TGS of its obligations under the Decree after the transfer regarding the UST systems at that Facility, provided that the following conditions are satisfied:

a. within sixty (60) Days before the expected transfer date, TGS performs tank and line tightness testing on the Facility UST system(s) to ensure that there are no leaking components in any UST system;

b. if the tank and line tightness testing in Paragraph 6.a evidences a leak, or routine release detection monitoring, tightness tests, or any other evidence indicates that a release may have occurred, TGS implements, before the transfer date, all corrective action, including repairs, upgrades, or permanent closure, as appropriate, in accordance with applicable regulations, including the regulations requiring performance of a site assessment, and in coordination with DNER;

c. TGS provides a copy of the Decree to the proposed transferee at least thirty (30) Days prior to such transfer;

d. TGS provides written notice of the prospective transfer and a copy of the proposed transfer agreement to EPA and DOJ at least thirty (30) Days prior to the transfer. (TGS may request a modification to this deadline if thirty (30) Days' prior notice is not reasonably possible);

e. the transfer of ownership or operation of the UST systems at the Facility is conditioned upon the transferee's express written agreement to implement all operation and maintenance obligations under the Decree with respect to the UST systems at the Facility;

f. the transferee agrees that the United States is a third party beneficiary of the transfer agreement and has the right to seek enforcement of such agreement;

g. TGS provides a copy of the executed transfer agreement to EPA within five (5) business days after it has been signed by both parties;

h. TGS ensures that the proposed transferee has secured financial assurance in accordance with the regulations applicable to owners/operators of USTs, and provides proof of that financial assurance to EPA at least ten (10) Days before the transfer; and

i. at least ten (10) Days before the transfer, TGS provides EPA a certification in accordance with Paragraph 32 that, to the best of its knowledge and belief after reasonable inquiry, there are no continuing releases or threats of releases at the Facility and that any prior spills have either been remediated or are in the process of remediation and will be completed by TGS in compliance with applicable regulations and in coordination with DNER.

7. If a lease agreement regarding one of the three (3) Facilities at which TGS operates UST systems owned by a third-party landlord (i.e., the Isabela, Vega Alta, or Caguas Facilities identified in Appendix A) expires and is not renewed or is terminated by the landlord without good cause, then TGS is not required to comply with the Consent Decree regarding the affected Facility, as of the date of such expiration or termination. The foregoing sentence does not apply to any obligation in effect prior to such lease expiration or termination. In any event, TGS must (a) notify EPA about any potential lease expiration at least sixty (60) days before such expiration; (b) notify EPA about any actual lease expiration, any threat of lease termination, or any actual lease termination within ten (10) days after such expiration, threat of termination, or actual termination; and (c) comply with the requirements of Paragraph 6.a and 6.b regarding the affected Facility before any lease expiration.

8. TGS shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform Work required under this Decree. TGS shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

9. In any action to enforce this Consent Decree, TGS shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

10. Terms used in this Consent Decree that are defined in the Act or in applicable regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Additional Facilities” shall mean the retail gasoline stations containing UST(s) owned and/or operated by TGS and located in Puerto Rico, as listed in Appendix B.

b. “Complaint” shall mean the complaint filed by the United States in this action;

c. “Consent Decree” or “Decree” shall mean this Decree and the Appendices attached hereto listed in Section XXII;

- d. “Date of Lodging” shall mean the date the Decree is lodged with the Court;
- e. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next business day;
- f. “DNER” shall mean the Puerto Rico Department of Natural and Environment Resources and any of its successor or predecessor departments or agencies, including but not limited to, the former Puerto Rico Environmental Quality Board (“EQB”);
- g. “Effective Date” shall have the definition provided in Section XIV (Effective Date);
- h. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- i. “EQB” shall mean the former Puerto Rico Environmental Quality Board, and any of its successor departments or agencies, including but not limited to DNER;
- j. “Facility” or “Facilities” shall mean the retail gasoline service stations containing underground storage tank(s) (“UST(s)”), individually or collectively, owned and/or operated by TGS and located in Puerto Rico, as listed in Appendix A;
- k. “Paragraph” or “¶” shall mean a portion of this Decree identified by an arabic numeral;
- l. “Parties” shall mean the United States and TGS;
- m. “PRUSTR” shall mean the Puerto Rico Underground Storage Tank Regulations as promulgated by EQB and approved by EPA;
- n. “Section” shall mean a portion of this Decree identified by a roman numeral;
- o. “State” shall mean Puerto Rico;
- p. “TGS” shall mean Defendant To Go Stores, LLC;
- q. “United States” shall mean the United States of America, acting on behalf of and including EPA and any successor departments, agencies, or instrumentalities of the United States;
- r. “USTs” shall mean underground storage tanks as defined by the Act and its implementing regulations;
- s. “UST system” shall mean an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any, as defined by the Act and its implementing regulations;

t. “Vendor” shall mean any contractor or subcontractor whose duties include performing any Work required under this Decree; and

u. “Work” shall mean all of the obligations set forth in Section V (Compliance Requirements).

IV. CIVIL PENALTY

11. Within 60 Days after the Effective Date of this Consent Decree, TGS shall pay the sum of \$125,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

12. TGS shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to TGS, by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the District of Puerto Rico, after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which TGS shall use to identify all payments required to be made in accordance with this Decree. The FLU will provide the payment instructions to:

Mr. Nelson L. Capote
President
To Go Stores, LLC
P.O. Box 309
Bayamón, PR 00960-0309
(787) 798-6434
nelso@togostores.com

on behalf of TGS, with a copy to TGS pursuant to Section XIII (Notices). TGS may change the individual to receive payment instructions on its behalf by providing written notice to the United States and EPA in accordance with Section XIII (Notices).

At the time of payment, TGS shall send notice that payment has been made to: (i) EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) the United States via email or regular mail in accordance with Section XIII; and (iii) to EPA Region 2 in accordance with Section XIII. Such notice shall refer to the CDCS number and DOJ case number 90-7-1-11717.

13. TGS shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income taxes.

V. COMPLIANCE REQUIREMENTS

14. Starting no later than the Date of Lodging, TGS shall comply with all applicable requirements of RCRA and PRUSTR alleged to have been violated in the Complaint with respect to all UST systems in the Facilities identified in Appendix A. These requirements include, without limitation, TGS's legal obligations under RCRA and PRUSTR to: (1) use spill prevention equipment; (2) use overfill prevention equipment; (3) operate and maintain corrosion protection; (4) inspect cathodic protection systems; (5) provide release detection for USTs; (6) provide release detection for pressurized piping; (7) secure monitoring wells; (8) test automatic line leak detectors; (9) equip pressurized lines with leak detectors; (10) report suspected releases; and (11) investigate suspected releases; and (12) maintain financial assurance.

15. Within 90 days of Entry, TGS shall investigate suspected releases as described below:

a. At the Bayamon/Rexville, Toa Baja, Gurabo, and Comerio Facilities, TGS shall conduct:

- i. A system test as described in Rule 503(A) of PRUSTR, as approved by EPA on January 30, 1998. TGS shall repair, replace, or upgrade the UST system if the test results for any part of the UST system indicate that a leak exists.
- ii. A site check as described in Rules 503(A)(3) and 503(B) of PRUSTR, as approved by EPA on January 30, 1998, if the system test results do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

b. Within 90 days of Entry, TGS must submit a report describing all efforts taken by TGS to remove the Magnolia Facility from DNER's LUST List. If the Magnolia Facility is removed from DNER's LUST List during the term of the Decree, TGS must notify EPA in the subsequent quarterly report required by Paragraph 29.

c. Within 90 days of Entry, TGS must submit a complete report detailing any tank replacement at the Guaynabo/Camarones Facility, including but not limited to all sampling data, site assessment report, and correspondence with DNER regarding this matter.

d. If a system test or site check results reveal soil contaminated with regulated substances leaked or released from the UST systems, TGS shall submit a site investigation plan or corrective action plan (as appropriate) to DNER with copies to EPA in accordance with Section XIII (Notices), for addressing contaminated soil, within 60 days of confirmation of the existence of such leak or release into soil, or 90 days of confirmation of the existence of such leak or release into soil upon TGS's demonstration that a third party contractor responsible for preparing such site investigation plan or corrective action plan requires an additional 30 days.

16. Release Detection. The provisions of this Section apply to Facilities identified in Appendix A with UST systems subject to release detection requirements of PRUSTR.

a. At all such Facilities, TGS shall cease using groundwater or vapor monitoring as exclusive or primary methods of release detection for tanks and piping no later than nine (9) months after the Date of Lodging;

b. At all such Facilities, by no later than nine (9) months after the Date of Lodging, TGS shall install or have already installed a fully automated release detection system, manufactured by Franklin Fueling Systems or a similar type of entity (the “Vendor”), which includes: (1) automatic tank gauging that can detect a 0.2 gallons per hour leak rate from any portion of the tank that routinely contains product; (2) interstitial monitoring for double-walled tanks; (3) electronic line leak detectors for any pressurized piping that can detect 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour on UST systems; and (4) either (i) annual line tightness testing for pressurized fuel lines that can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure, or (ii) monthly pressurized fuel line testing that can detect a 0.2 gallon per hour leak rate. This fully automated release detection system will serve as TGS’s primary method of release detection for the tanks and pressurized piping associated with the UST systems for all such Facilities.

c. For all Facilities where TGS installed the fully automated release detection system described in subparagraph 16.b prior to the Date of Lodging, no later than thirty (30) days after the Date of Lodging, TGS shall provide a report to the persons identified in Section XIV (Notices) identifying those Facilities at which such a system was installed prior to the Date of Lodging and is currently operating as a means of release detection;

d. at all Facilities subject to this Paragraph, operate the automated release detection systems for a minimum of three (3) years from the date that the systems are installed or from the Date of Lodging if any such system is already installed and operating at any Facilities. The automated release detection systems shall log and store all alarms, including those arising from potential or suspected releases, spill or overflow of tanks, malfunction/failure of components, and disconnection of components.

e. Within 30 days of Lodging, TGS shall not use inventory control and tank tightness as a method of release detection for USTs that are more than ten years old in accordance with applicable PRUSTR Rule 402(A)(1), as approved by EPA on January 30, 1998.

f. for all Facilities subject to this Paragraph, provide summaries of the information gathered by the automated release detection systems pursuant to subparagraph (d) above in quarterly reports to EPA pursuant to Section VI (Reporting Requirements). Upon EPA’s request, TGS shall provide any information in its possession obtained or reported by the above-described monitoring system. In addition, TGS’s contract with the Vendor shall require that, upon EPA’s request, the Vendor shall also provide any information in its possession obtained or reported by the above-described monitoring system.

g. TGS shall ensure that the contract between the Vendor and TGS provides that the Vendor maintain all records generated pursuant to subparagraph (c) above for a minimum of five (5) years after the termination of this Decree, and that the Vendor shall provide such records to EPA upon request. Nothing in this subparagraph shall release TGS from its obligation to comply with any applicable regulations under the PRUSTR that require TGS to maintain records.

h. If TGS uses monitoring wells as a supplemental or emergency method of release detection after the Date of Lodging, TGS shall ensure that all such Facilities supply documentation of a site assessment demonstrating the adequacy of monitoring wells for release detection purposes. If product is detected in any monitoring wells, TGS shall cease using groundwater monitoring or vapor monitoring as the exclusive method of release detection for all USTs and UST systems at all Facilities within two (2) days of detection. Within 60 days of Lodging, TGS shall submit documentation of any site assessments performed at any Facility where groundwater monitoring or vapor monitoring will be used to perform release detection after the Date of Lodging. If TGS performs any site assessment after the Date of Lodging at any other Facility where well monitoring will be used to perform release detection, TGS shall submit such documentation within 60 days of final completion of the site assessment report.

i. To Go shall immediately investigate when any release detection monitoring system indicates a potential leak and determine whether the UST system is leaking.

17. Additional Facilities. The provisions of this Section apply to Additional Facilities with UST systems subject to release detection requirements of PRUSTR.

a. At all such Additional Facilities, TGS shall cease using groundwater or vapor monitoring as exclusive or primary methods of release detection for tanks and piping no later than eighteen (18) months after the Date of Lodging;

b. At all such Additional Facilities, by no later than eighteen (18) months after the Date of Lodging, TGS shall install or have already installed a fully automated release detection system, manufactured by Franklin Fueling Systems or a similar type of entity (the "Vendor"), which includes: (1) automatic tank gauging that can detect a 0.2 gallons per hour leak rate from any portion of the tank that routinely contains product; (2) interstitial monitoring for double-walled tanks; (3) electronic line leak detectors for any pressurized piping that can detect 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour on UST systems; and (4) either (i) annual line tightness testing for pressurized fuel lines that can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure, or (ii) monthly pressurized fuel line testing that can detect a 0.2 gallon per hour leak rate. This fully automated release detection system will serve as TGS's primary method of release detection for the tanks and pressurized piping associated with the UST systems for all such Additional Facilities.

18. Within 15 days of Lodging, TGS shall ensure that spill prevention equipment is in place at the Lares Facility.

19. Within 30 days of Lodging, TGS shall ensure that all UST systems at its Guaynabo/Los Frailes Facility are equipped with automatic line leak detectors for all pressurized lines.

20. Within 36 months of Lodging, TGS shall replace the two (2) steel UST systems at the Barceloneta Facility listed in Appendix A and the four (4) steel UST systems at the Norte Shopping Center listed in Appendix B in accordance with applicable laws, regulations and permits.

21. Corrosion Protection:

a. Within 30 days of Lodging, TGS shall ensure that any cathodic protection systems at the Barceloneta and Santa Rosa Facilities are tested by a qualified cathodic protection tester in accordance with applicable regulations, or provide documentation that such cathodic protection systems have been tested in accordance with the applicable regulatory timeframe.

b. TGS shall inspect the impressed current rectifier at the Santa Rosa facility at least once every sixty (60) days.

c. For any newly installed cathodic protection system at the Facilities listed in this Paragraph, TGS shall ensure that the cathodic protection systems at these locations are tested within six months of installation by a qualified cathodic protection tester and tested at least once every three years thereafter.

22. During the term of the Consent Decree, upon the discovery of any suspected release of product from any UST system at any Facility identified in Appendix A, TGS shall notify EPA in accordance with the reports required by Paragraph 29. Conditions indicating a suspected release include, but are not limited to:

a. the presence of regulated substances (including gasoline, diesel, or other fuels) in liquid or vapor form in sumps, soils, basements, sewer lines, utility lines, nearby surface waters, or monitoring wells; damaged or malfunctioning spill prevention equipment; damaged or malfunctioning overfill prevention equipment;

b. unusual operating conditions such as erratic behavior of product dispensing equipment, the sudden loss of product from an UST system, or the unexplained presence of water in an UST; or

c. monitoring results from a release detection method that indicate a release may have occurred unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; or

d. monitoring results from a release detection method required under PRUSTR Rule 402 and Rule 403, as approved by EPA on January 30, 1998, that indicate a release may have occurred, unless the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result.

23. Centralized Monitoring System. TGS shall install a centralized monitoring system (“CMS”) for all UST systems at the Facilities listed in Appendix A and the Additional Facilities listed in Appendix B, in accordance with all provisions of this Decree, including those set forth in Appendix C. The CMS shall collect all data generated by the release detection monitoring systems required by Paragraphs 16 and 17.b and electronically transmit it to a central location at TGS’s or Vendor’s offices. The CMS will contain both audible and visible alarms on the console’s panels (which alert the station personnel of any alarm conditions that the installed sensors detect). The system will record and maintain that alarm data as well as system testing data at a centralized location. These systems shall be configured for remote monitoring by the Vendor’s central data monitoring system at TGS’s or Vendor’s offices. All alarms and testing

data shall be transmitted to the Vendor's data center at TGS's or Vendor's offices and retained by the Vendor at a data center or other centralized location (which shall include the ability to access electronic records stored elsewhere on remote servers) for a period of five (5) years. If an alarm is reported, the Vendor, acting on TGS's behalf, will initiate contact of the personnel responsible for addressing the alarm condition and conducting any necessary response, repair, and/or investigation work.

a. TGS shall install all necessary components (including, but not limited to modems and wiring) for and begin operation of CMS at the Facilities listed in Appendix A within twelve (12) months of the Effective Date. TGS shall install all necessary components for and begin operation of CMS at the Additional Facilities listed in Appendix B within thirty-six (36) months of the Effective Date. TGS may use contractors or consultants in planning and implementing the CMS.

b. Within sixty (60) Days of the deadline for completion of the installation of the CMS at the Facilities, TGS shall submit a report to the United States in accordance with Section XIII (Notices). The report shall contain the following information: (i) a description of the installation of the centralized monitoring equipment; (ii) a description of any problems encountered in installing the centralized monitoring equipment and the solutions thereto; and (iii) a certification that the centralized monitoring equipment has been fully installed pursuant to the provisions of this Decree. Within sixty (60) Days of the Deadline for completion of the installation of the CMS at the Additional Facilities, TGS shall submit a report to the United States in accordance with Section XIII (Notices) regarding the installation of CMS at the Additional Facilities that contains the same information described in this subparagraph.

c. Within one (1) year of the submittal of the report for the Facilities and annually thereafter until termination of the Decree pursuant to Section XVII (Termination) below, TGS shall submit a written certification confirming that to the best of its knowledge and belief after reasonable inquiry, the CMS's performance requirements, as enumerated in Section B of Appendix C, have been met and that operation and maintenance obligations have been fully implemented during the reporting period ("O&M Annual Certification") pursuant to the provisions of this Decree.

d. TGS may employ a Vendor/Contractor in the preparation of the report, so long as TGS remains responsible for the submission and its submittal to EPA.

e. EPA may require information in addition to that described in the preceding Paragraph, in order to evaluate TGS's compliance with the requirements of the CMS.

f. After receiving the report and the O&M Annual Certifications, the United States shall notify TGS whether or not TGS has satisfactorily completed the CMS. If TGS has not completed the CMS in accordance with this Decree, stipulated penalties may be assessed under Section VII (Stipulated Penalties).

g. Disputes concerning the satisfactory performance of the CMS may be resolved under Section IX (Dispute Resolution). No other disputes arising from the CMS shall be subject to Dispute Resolution.

h. Each submission required under this Section shall be signed by an official with knowledge of the CMS and shall include the certification language set forth in Paragraph 32.

i. TGS shall operate and maintain in good working condition the centralized monitoring equipment and remote fuel management software described in Appendix C in accordance with manufacturers' recommendations for all UST systems in at least 12 Facilities listed in Appendix A for a minimum of three (3) years from the commencement of operation of the centralized monitoring system (i.e., gathering and disseminating data to a central location) for at least 12 Facilities, starting no later than twelve (12) months after the Effective Date.

24. If between the Date of Lodging and the date of termination of this Decree, TGS begins to either (i) own or operate USTs at a Facility/Facilities not identified in Appendix A (except at the Additional Facilities), or (ii) own or operate new USTs at a Facility/Facilities identified in Appendix A (except at the Additional Facilities), or (iii) resumes the operation of a temporarily closed USTs at a Facility/Facilities identified in Appendix A (except at the Additional Facilities), TGS shall notify the United States, according to Section XIV (Notices), within one (1) month after such commencement or resumption. These new USTs will be subject to the requirements of this Consent Decree unless the United States informs TGS of its disapproval or need for additional information within forty-five (45) days of receipt of the notice. For purposes of Section XVI (Modification), the addition of a Facility/Facilities to Appendix A under this section shall not be deemed a modification of this Decree. For all USTs subject to this Paragraph, Defendant shall have a fully automated release detection system installed by no later than six (6) months after the date when the notice was to be provided pursuant to this Paragraph, and shall operate the automated release detection system at that location(s) for a minimum of three (3) years thereafter or until the termination of the Consent Decree, whichever occurs first.

25. Confirmation Report: In the first report submitted in accordance with Paragraph 29, TGS shall include the following:

a. Documentation, including photographs, that proper spill prevention equipment is installed and operational at the Lares Facility as required by Paragraph 18;

b. Documentation such as photographs, that proper automatic line leak detectors for all pressurized lines are installed and operational at the Guaynabo/Los Frailes as required by Paragraph 19; and

c. The results of the cathodic protection tests as required by paragraph 21.

26. Approval of Deliverables.

a. Upon submission of the first report submitted in accordance with Paragraph 29, EPA may approve the submission, decline to approve it, and/or provide written comments. Within 60 days of receiving EPA's written comments, TGS shall either:

i. alter the submission consistent with EPA's written comments, remedy any problem identified by EPA, and provide the revised submission to EPA for final approval; or

ii. submit the matter for dispute resolution under Section IX of this Decree.

b. For all other deliverables required by this Decree, EPA may, in its discretion, decide whether to respond to the submission and if EPA does respond, it may approve the submission, decline to approve it, and/or provide written comments. If EPA informs TGS that EPA declines to approve or provides written comment to the submission, TGS shall either:

i. alter the submission consistent with EPA's written comments, remedy any problem identified by EPA, and provide the revised submission to EPA for final approval; or

ii. submit the matter for dispute resolution under Section IX of this Decree.

27. This Decree in no way relieves TGS of its responsibility to comply with all applicable federal, State, and/or local laws, regulations and/or permits. Compliance with this Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits.

28. Permits. Where any compliance obligation under this Section requires TGS to obtain a federal, State, or local permit or approval, TGS shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. TGS may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if TGS has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

29. TGS shall submit the following reports in hard copy or by electronic format to the United States and EPA during the term of this Consent Decree:

Within thirty (30) Days after the end of each calendar quarter (i.e., by January 30, April 30, July 30 and October 30) after Lodging of this Decree, until termination of this Decree, TGS shall submit by email to EPA a quarterly report for the preceding three-month period that shall include descriptive information regarding: (1) problems encountered or anticipated, together with implemented or proposed solutions; (2) status of any permit applications relevant to the implementation of this Decree; (3) a discussion of TGS's progress in satisfying its obligations under Section V (Compliance Requirements), including, at a minimum, a narrative description of activities undertaken, the status of any construction or compliance measures (e.g., evidence of unusual operating conditions, alarms deemed material, and response actions taken, etc.), and the status of implementing the requirements of Paragraphs 16 and 17; (4) summaries, as required by Paragraph 16.f, of the information gathered by the automated release detection systems at the Facilities and the Additional Facilities; (5) status of the implementation of CMS at the Facilities and the Additional Facilities in accordance with Paragraph 23, including the deadlines in Paragraph 23.a; and (6) report as to whether the CMS installed and operating at the Facilities and

the Additional Facilities is being operated and maintained in good working order in accordance with Paragraph 23.i.

30. If TGS violates, or has reason to believe that it may violate, any requirement of this Consent Decree, TGS shall notify the United States of such violation and its likely duration, in writing, within ten (10) business Days of the Day TGS first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, TGS shall so state in the report. TGS shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day TGS becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves TGS of its obligation to provide the notice required by Section VIII of this Decree (Force Majeure).

31. Whenever any violation of this Consent Decree or of any other event affecting TGS' performance under this Decree, may pose an immediate threat to the public health or welfare or the environment, TGS shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after TGS first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

32. Each report submitted by TGS under this Section shall be signed by an official of TGS and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical based on the circumstances.

33. The reporting requirements of this Consent Decree do not relieve TGS of any reporting obligations required by the Act or PRUSTR, or by any other federal, State, Commonwealth, or local law, regulation, permit, or other requirement.

34. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

35. TGS shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

36. Late Payment of Civil Penalty: If TGS fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, TGS shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.

37. Compliance Milestones:

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraphs 6–7, 14–16, 18–19, 20 (as it relates to the Barceloneta Facility), 21–22, 23 (as it relates to Facilities) and 24:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,500	15th through 30th Day
\$3,000	31st Day and beyond

b. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Paragraphs 17, 20 (as it relates to Norte Shopping Center), and 23 (as it relates to Additional Facilities):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$750	15th through 30th Day
\$1,500	31st Day and beyond

38. Reporting Requirements: The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Paragraph 25 and Section VI (Reporting Requirements) of this Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day

\$1,500	15th through 30th Day
\$2,500	31st Day and beyond

39. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Decree.

40. TGS shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand unless TGS has invoked and is complying with the procedures of Section IX (Dispute Resolution).

41. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Decree.

42. Stipulated penalties shall continue to accrue as provided in Paragraph 39, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, TGS shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, TGS shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, TGS shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

43. TGS shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 12, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

44. If TGS fails to pay stipulated penalties according to the terms of this Consent Decree, TGS shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for TGS's failure to pay any stipulated penalties.

45. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Decree.

46. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for TGS's violation of this Decree or applicable law, including but not limited to an action against TGS for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Decree

VIII. FORCE MAJEURE

47. "Force Majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of TGS, of any entity controlled by TGS, or of TGS's contractors, that delays or prevents the performance of any obligation under this Decree despite TGS's best efforts to fulfill the obligation. The requirement that TGS exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure does not include TGS's financial inability to perform any obligation under this Decree.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, TGS shall provide notice orally or by electronic or facsimile transmission to EPA within 72 hours of when TGS first knew that the event might cause a delay. Within seven (7) Days thereafter, TGS shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; TGS's rationale for attributing such delay to Force Majeure if it intends to assert such a claim; and a statement as to whether, in the opinion of TGS, such event may cause or contribute to an endangerment to public health, welfare, or the environment. TGS shall include with any notice all available documentation supporting the claim that the delay was attributable to Force Majeure.

49. Failure to comply with the above requirements shall preclude TGS from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. TGS shall be deemed to know of any circumstance of which TGS, any entity controlled by TGS, or TGS's contractors knew or should have known.

50. If EPA agrees that the delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Decree that are affected by Force Majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by Force Majeure shall not, of itself, extend the time for performance of any other obligation. EPA will notify TGS in writing of the length of the extension, if any, for performance of the obligations affected by Force Majeure.

51. If EPA does not agree that the delay or anticipated delay has been or will be caused by Force Majeure, EPA will notify TGS in writing of its decision.

52. If TGS elects to invoke the dispute resolution procedures set forth in Section IX, it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, TGS shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by Force Majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that TGS complied with the requirements of Paragraphs 47 and 48. If TGS carries this burden, the delay at issue shall be deemed not to be a violation by TGS of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

53. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. TGS's failure to seek resolution of a dispute under this Section shall preclude TGS from raising any such issue as a defense to an action by the United States to enforce any obligation of TGS arising under this Decree.

54. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when TGS sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, TGS invokes formal dispute resolution procedures as set forth below.

55. Formal Dispute Resolution. TGS shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting TGS's position and any supporting documentation relied upon by TGS.

56. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of TGS' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on TGS, unless TGS files a motion for judicial review of the dispute in accordance with the following Paragraph.

57. TGS may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion

requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of TGS's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

58. The United States shall respond to TGS's motion within the time period allowed by the Local Rules of this Court. TGS may file a reply memorandum, to the extent permitted by the Local Rules.

59. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 55 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Decree; the adequacy of the performance of Work; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, TGS shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Decree, in any other dispute brought under Paragraph 55, TGS shall bear the burden of demonstrating that its position complies with this Consent Decree and applicable law.

60. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of TGS under this Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 42. If TGS does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII.

X. INFORMATION COLLECTION AND RETENTION

61. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Decree;
- c. obtain samples and, upon request, splits of any samples taken by TGS or its representatives, contractors, or consultants;

- d. obtain documentary evidence, including photographs and similar data; and
- e. assess TGS's compliance with this Decree.

62. Upon request, TGS shall provide EPA, or its authorized representatives, splits of any samples taken by TGS or its consultant. Upon request, EPA shall provide TGS or the consultant splits of any samples taken by EPA.

63. Until five (5) years after the termination of this Decree, TGS shall retain, and shall instruct its consultant, contractors, and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its consultant's, contractors', or agents' possession or control, or that come into its or its consultant's, contractors', or agents' possession or control, and that relate in any manner to TGS's performance of its obligations under this Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, TGS shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

64. At the conclusion of the information-retention period provided in the preceding Paragraph, TGS shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, TGS shall deliver any such documents, records, or other information to EPA. TGS may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If TGS asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by TGS. However, TGS shall not make any claim of privilege or protection regarding: (i) any data regarding a Facility, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around a Facility; or (ii) the portion of any record that TGS is required to create or generate in accordance with this Decree.

65. TGS may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that TGS seeks to protect as CBI, TGS shall follow the procedures set forth in 40 C.F.R. Part 2.

66. This Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of TGS to maintain documents, records, or other information imposed by applicable federal or State laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. This Consent Decree resolves the civil claims of the United States against TGS for the violations alleged in the Complaint filed in this action through the Date of Lodging for the Facilities listed in Appendix A, which is conditioned upon the full payment of all penalties (including stipulated penalties and any interest accrued), the satisfactory performances of the Compliance Requirements (as set forth in Section V), and accurate certifications and reporting required under this Decree.

68. The United States reserves all legal and equitable remedies available to enforce the provisions of this Decree, except as expressly stated in Paragraph 67. This Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or State laws, regulations, or permit conditions, except as expressly specified in Paragraph 67.

69. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility or TGS's violations, TGS shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 67 of this Section.

70. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. TGS is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and TGS's compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that TGS's compliance with any aspect of this Decree will result in compliance with provisions of the Act, 42 U.S.C. § 6009 *et seq.*, PRUSTR, or with any other provisions of federal, State, or local laws, regulations, or permits.

71. This Consent Decree does not limit or affect the rights of TGS or of the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against TGS, except as otherwise provided by law.

72. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

XII. COSTS

73. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by TGS.

XIII. NOTICES

74. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-7-1-11717
Eescdcopy.enrd@usdoj.gov

and

To EPA:

UST Team Leader
Enforcement and Compliance Assurance Division
EPA Region 2
290 Broadway, 21st Floor
New York City, NY 10007-1866

To TGS:

Mr. Nelson L. Capote
President
To Go Stores, LLC
P.O. Box 309
Bayamón, PR 00960-0309
(787) 798-6434
nelso@togostores.com

and

Mr. Edwin R. Cruz
Member, Pietrantonio Mendez & Alvarez, LLC
Banco Popular Center – 19th Floor
208 Ponce de León Ave
San Juan, PR 00918
(787) 274-5242
ecruz@pmaalaw.com

75. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

76. Where an email address is provided, notices submitted pursuant to this Section shall be deemed submitted upon emailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

77. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

78. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolutions) and XVI (Modifications), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

79. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

80. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution) of this Decree, provided, however, that instead of the burden of proof provided by Paragraph 59, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

81. After TGS has (a) completed the installation of CMS at all Additional Facilities in Appendix B in accordance with the requirements of Paragraph 23; (b) completed all other requirements of Section V (Compliance Requirements) and Section VI (Reporting Requirements) of this Decree; (c) paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree; and (d) submitted a signed certificate of compliance with this

Decree and PRUSTR, TGS may serve upon the United States a Request for Termination, stating that TGS has satisfied these requirements, together with all necessary supporting documentation.

82. Following receipt by the United States of TGS's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether TGS has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

83. If the United States does not agree that the Decree may be terminated, TGS may invoke Dispute Resolution under Section IX of this Decree. However, TGS shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 55 of Section IX, until sixty (60) Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

84. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. TGS consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified TGS in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

85. Each undersigned representative of TGS and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

86. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. TGS agrees to accept service of process by email with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

87. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the

settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

88. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and TGS. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

XXII. APPENDIX

89. The following Appendices are attached to and incorporated into this CD:

“Appendix A” identifies the Facilities subject to the claims in the Complaint and the obligations of this Decree.

“Appendix B” identifies the Additional Facilities subject to this Decree.

“Appendix C” identifies the specifications of the Centralized Monitoring System of Paragraph 23.

XXIII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

90. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability) Paragraph 5; Section V (Compliance Requirements) Paragraphs 14–26 and 28; Section VI (Reporting Requirements) Paragraphs 29 and 32; and Section X (Information Collection and Retention) 61–63 is restitution or required to come into compliance with law.

Dated and entered this __ Day of _____, 2022.

UNITED STATES DISTRICT JUDGE
District of Puerto Rico

FOR THE UNITED STATES OF AMERICA:

NATHANIEL DOUGLAS Digitally signed by
NATHANIEL DOUGLAS
Date: 2022.01.11
13:44:58 -05'00'

Date

NATHANIEL DOUGLAS
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

NATALIE HARRISON Digitally signed by NATALIE
HARRISON
Date: 2022.01.11 14:31:32
-05'00'

Date

NATALIE G. HARRISON
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
Washington, DC 20044-7611

**FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:**

**Schaaf,
Eric**

Digitally signed by
Schaaf, Eric
Date: 2021.12.29
09:36:58 -05'00'

Date

ERIC SCHAAF

Regional Counsel

U.S. Environmental Protection Agency, Region 2

290 Broadway, 17th Floor

New York City, NY 10007-1866

CARL HOWARD

Digitally signed by CARL HOWARD
Date: 2021.12.29 10:47:13 -4'00'

Date

CARL HOWARD

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 2

290 Broadway, 16th Floor

New York City, NY 10007-1866

**FOR
TO GO STORES, LLC**

**Nelson
Capote**

Digitally signed by
Nelson Capote
Date: 2021.12.28
14:40:38 -04'00'

Date

NELSON CAPOTE
President
To Go Stores, LLC

**Edwin R.
Cruz**

Digitally signed by: Edwin R. Cruz
DN: CN = Edwin R. Cruz email =
ecruz@pmlaw.com C = AD
Date: 2021.12.28 10:17:52 -
04'00'

Date

EDWIN R. CRUZ
Member, Pietrantonio Mendez & Alvarez, LLC
Banco Popular Center – 19th Floor
208 Ponce de León Ave
San Juan, PR 00918

Counsel for To Go Stores, LLC

APPENDIX A: FACILITIES

1. Carr. 2, Km. 29.1, Vega Alta (“Vega Alta Facility”);
2. Carr. 169, Km. 0.7, Guaynabo (“Guaynabo / Camarones Facility”);
3. Carr. 169, Km. 4.9, Guaynabo (“Guaynabo / Los Frailes Facility”);
4. Ave. Magnolia, Esq. 115, Bayamon (“Bayamon / Magnolia Facility”);
5. Carr. 2, Km 12.1, Bayamon (“Bayamon / Correa Facility”);
6. Carr. 107, Km. 3.0, Aguadilla (“Aguadilla Facility”);
7. Carr. 112, Km. 2.4, Isabela (“Isabela Facility”);
8. Ave. Periferal, Esq. San Sebastian, Bayamon (“Bayamon / Rexville Facility”);
9. Carr. 2, Km. 56, Barceloneta (“Barceloneta Facility”);
10. Carr. 2, Km. 20.2, Toa Baja (“Toa Baja Facility”);
11. Carr. 189, Km. 4.0, Gurabo (“Gurabo Facility”);
12. Carr. 189, Calle Baldorioty, Caguas (“Caguas Facility”);
13. Carr. 837, Km. 0.8, Guaynabo (“Guaynabo / Santa Rosa Facility”);
14. Carr. Ramal 111, Lares (“Lares Facility”); and
15. Carr. 775, Km. 0.4, Comerio (“Comerio Facility”).

APPENDIX B: ADDITIONAL FACILITIES

1. Carr. #189 Km. 2.3 Caguas, PR (“Caguas Cementerio Facility”)
2. Carr. #19 Km. 1.0 Guaynabo, PR (“Altamira Facility”)
3. Ave. Flor del Valle Esq. #1 Las Vegas, Cataño, PR (“Las Vegas Facility”)
4. Ave. Andalucía #397 Esq. Acapulco, San Juan, PR (“Andalucía Facility”)
5. Plaza Interamericana Carr. #838 Km. 4.4 San Juan, PR (“Interamericana Facility”)
6. Ave. Font Martelo #251 Humacao, PR (“Humacao Facility”)
7. Ave. Orquidea & Calle Lirio, Urb. Valencia, Bayamón, PR (“Valencia Facility”)
8. Norte Shopping Center, Ave. Baldorioty San Juan, PR (“Norte Shopping Facility”)
9. Ave. 65 Infantería PR-3 Km. 7.0 Bo. San Anton Carolina, PR (“Carolina Facility”)
10. Carr. 831 Km. 2.7 Bo. Minillas Bayamon, PR (“Minillas Facility”)
11. 448 Ave. Barbosa Esq. Calle Guayama San Juan, PR (“Barbosa Facility”)
12. Carr. 31 Km. 23.4 Bo. Ceiba Norte Juncos, PR (“Toral Juncos Facility”)
13. Carr. 1 Km. 87.3 Bo. Coco Viejo Salinas, PR (“Total Salinas Facility”)
14. #54 Calle Comercio Corner La Cruz Street Ponce, PR (“Ponce Ceiba Facility”)
15. Carr. 176 Esq. San Javier Sagrado Corazón San Juan, PR (“Cupey Facility”)
16. PR-833 Km. 12.4 Bo. Frailes Guaynabo, PR (“Baldwin Facility”)
17. Calle Reina de las Flores Urb. Loiza Valley Canovanas, PR (“Loíza Valley Facility”)
18. Calle Muñoz Rivera #48 Bo. Pueblo Rincon, PR (“Rincon Facility”)
19. Solar #1 PR-584 Int. PR-510 Km. 4.0 Juana Diaz, PR (“Juana Diaz Facility”)
20. Km. HM 21.7 Calle 15 Esq. 167 Urb. Forest Hills Bayamón, PR (“Forest Hills Facility”)
21. Carr. 924 Km. 3.0 Bo. Pitahaya Humacao, PR (“Pitahaya Facility”)
22. Carr. 110 Km. 27.3 Bo. Aguacate Aguadilla, PR (“Aguadilla 110 Facility”)
23. Ave. Magnolia #1000, Urb. Magnolia Gardens, Bayamón, PR (“Shell Magnolia Gardens Facility”)
24. Carr. #3, Km. 54.7, Bo. Pueblo, Ceiba, PR (“Ceiba Facility”)
25. Calle Comerío #308, Bayamón, PR (“Bayamon #74 Facility”)
26. Carr. #155, Km. 67.2, Bo. Algarrobo, Vega Baja (“Vega Baja Facility”)
27. Carr. #2, Km. 138.2, Bo. Naranjo, Aguada, PR (“Aguada Facility”)
28. Carr. #834, Km. 2.2, Bo. Hato Nuevo, Guaynabo, PR (“Toral Valle Escondido Facility”)

APPENDIX C

CENTRALIZED MONITORING SYSTEM

TGS shall install, operate and maintain a centralized monitoring system that collects data generated by the release detection monitoring equipment on TGS's owned USTs and electronically transmits it to one central location, in accordance with the specifications and criteria identified in this Appendix C.

A. Equipment: The centralized electronic monitoring system shall be installed at the Facilities identified in Appendix A and at the Additional Facilities, and shall be equipped with the following equipment:

1. Centralized Monitoring Equipment: Instruments capable of transmitting by standard Ethernet connection data generated by the release detection monitoring equipment installed pursuant to Paragraph 23 of this Decree, consisting of:

Ethernet Port Server Consoles at each Facility with associated monitoring hardware;

Interface Ethernet Port Server Modules on existing tank sensors;

Configure Ethernet Port Server Modules to Ethernet connection at each Facility (with internet access to be provided to each Facility); and

Program tank monitors to communicate with Ethernet Port Server system.

2. Remote Fuel Management Software: Software compatible with existing UST-monitoring hardware, such as Franklin Systems Sentinel or equivalent software, and capable of collecting data generated by the release detection monitoring equipment installed pursuant to this Decree, and transmitting it in real-time to the centralized monitoring location.

B. Performance Requirements:

1. The centralized monitoring equipment shall be capable of sounding both audible and visible alarms on the equipment's consoles to alert Facility personnel of any alarm conditions that the installed sensors detect.

2. The centralized monitoring equipment must be capable of collecting and storing all data generated by the release detection monitoring equipment installed pursuant to this Decree from each Facility, including but not limited to the leak detection rate required by Paragraph 16 of this Decree, and electronically transmitting it to a monitoring console located in the office of Defendant's central location at King's Court #82, Condado Ward, San Juan 00911, and/or in the office of Defendant's Vendor located in Manatí, Puerto Rico ("Central Office"). All data shall mean all data required to be generated by this Decree, consisting of release detection monitoring reports for each UST system and its associated piping, alarm data, line tightness test data, and line leak detector test data.

3. The remote fuel management software must be capable of collecting, in real-time, all “FUEL ALARM,” “ALARM,” or “ACTIVE,” data collected by the release detection monitoring equipment installed pursuant to the Decree, and electronically transmitting it to the centralized location.

4. If “FUEL ALARM,” “ALARM,” “ACTIVE” data, or other condition that may indicate a release of a regulated substance, is reported, Defendant shall immediately notify on-site personnel who can take immediate action (*e.g.*, inspect sumps, turn off dispensers, etc.) to minimize the effects of a suspected release, and investigate the “Fuel Alarm,” “Alarm,” “Active” data or other condition in accordance with the “system test” or “site check” procedures laid out in 40 C.F.R. § 280.52 and its equivalent in PRUSTR. Where Defendant’s investigation into the “Fuel Alarm,” “Alarm,” “Active” data or other condition indicates a potential release of a regulated substance, Defendant must contact response personnel at EPA and DNER within 24 hours and shall address the condition and conduct any necessary response and repair work in accordance with the requirements set forth in the applicable PRUSTR requirements.

C. Record Retention: All reports and data generated by release detection monitoring equipment at each Facility shall be electronically transmitted to the Central Office and shall be retained at the Central Office for a minimum of five (5) years from the termination of this Decree pursuant to Section XVIII of the Decree. Reports shall be available to EPA upon request.