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I. INTRODUCTION

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action (“Complaint”) concurrently with this Consent Decree, alleging that Defendant, Total Petroleum Puerto Rico Corporation (“Defendant” or “TPPRC”), violated and is violating Sections 301, 308, and 402 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311, 1318 and 1342, respectively, as well as regulations promulgated thereunder, for violations of the terms and conditions of Defendant’s National Pollutant Discharge Elimination System (“NPDES”) Permit Number PR0000787 (“2006 Permit”), issued by EPA to Defendant pursuant to Section 402 of the CWA, 33 U.S.C. § 1342; and for discharging Stormwater associated with industrial activity without a NPDES permit.

WHEREAS, Plaintiff’s Complaint against Defendant seeks injunctive relief and civil penalties pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and alleges that Defendant violated and continues to violate Sections 301, 308 and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342, as well as regulations promulgated thereunder, at its Guaynabo Bulk Fuels Terminal (“Facility”), located on the southern shore of San Juan Harbor in Guaynabo, Puerto Rico, which is owned and/or operated by Defendant. Specifically, the United States alleges that Defendant has failed to, among other things: comply with the CWA by exceeding certain effluent limits set forth in the 2006 Permit; implement Structural and Non-Structural Best Management Practices (“BMPs”); revise and implement a Stormwater Pollution Prevention Plan (“SWPPP”); establish representative discharge and sampling points; provide adequate operation and maintenance of the Facility’s Stormwater collection and discharge system; monitor and report discharge data representative of the Facility’s discharges of pollutants; and file and obtain an NPDES permit for certain unpermitted Stormwater discharges associated with industrial activity.

WHEREAS, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint. The United States and Defendant (collectively referred hereinafter as the “Parties”) agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Defendant.

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 among the Parties, and that this Consent Decree is fair, reasonable, and consistent with the goals of the statute, in this instance, the CWA.

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

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and over the Parties. Venue lies in this judicial district pursuant to 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 (b) and (c), and 1395(a), because the violations alleged in the Complaint are in this judicial district where Defendant conducts business. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court’s jurisdiction over this Consent Decree and any such action stemming from this Consent Decree and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d).

3. The United States has given notice of commencement of this action to the Commonwealth of Puerto Rico (“Commonwealth”).

III. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, or any portion thereof, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented. At least thirty (30) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA, the United States Attorney for the District of Puerto Rico, and the United States Department of Justice (“DOJ”), in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. Defendant 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 Consent Decree, and to any contractor retained to perform work required under this Consent Decree, as well as a summary of the applicable requirements of this Consent Decree to all employees and agents whose duties include work required under this Consent Decree. Defendant shall condition

any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant 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, except as provided under Section XIII (Force Majeure). This Section shall not limit Defendant's right to take all appropriate actions against any person or entity that causes or contributes to Defendant's failure to comply with this Consent Decree.

IV. OBJECTIVES

8. The express purpose of the Parties entering into this Consent Decree is for Defendant to fulfill the requirements of the CWA, the regulations promulgated thereunder, and obtain NPDES permitting coverage to authorize all discharges of pollutants at Defendant's Facility, or apply for a conditional exclusion from NPDES Stormwater permitting for its Facility, subject and conditioned to EPA's review, approval or denial. All plans, measures, reports, construction, maintenance, operational requirements and other obligations under this Consent Decree shall have the objective of ensuring that the Defendant achieves and maintains for the full term of this Consent Decree full compliance with the CWA and its objectives.

V. DEFINITIONS

9. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the CWA, 33 U.S.C. § 1251 *et seq.*, and the regulations promulgated thereunder. The following terms, as used in this Consent Decree and for purposes of this Consent Decree only, will be defined as follows:

a. “**Allowable Non-Stormwater**” shall mean the Non-Stormwater flows entering the Facility’s current and future Stormwater collection and discharge system, which only includes the following:

i. Discharges from emergency/unplanned fire-fighting activities (including also activities during fire-fighting equipment emergency drills required pursuant to United States, Commonwealth, and/or municipality of Guaynabo statutes and regulations);

ii. Fire hydrant flushings;

iii. Potable water, including water line flushings;

iv. Uncontaminated condensate from air conditioners, coolers/chillers, and other compressors and from the outside storage of refrigerated gases or liquids;

v. Irrigation drainage;

vi. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;

vii. Pavement wash waters where no detergents or hazardous products are used (e.g., bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols) and the wash waters do not come into contact with oil and grease deposits, sources of pollutants associated with industrial activities (see Part 5.2.3 of the MSGP), or any other toxic or hazardous materials, unless residues are first cleaned up using dry clean-up methods (e.g., applying absorbent materials and sweeping, using hydrophobic mops/rags) and Defendant has implemented appropriate control measures to minimize discharges of mobilized solids and other pollutants (e.g., filtration, detention, settlement);

viii. Routine external building washdown/power wash water that does not use detergents (e.g., those containing bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols);

ix. Uncontaminated ground water (e.g., free of hydrocarbon compounds) or spring water;

x. Foundation or footing drains where flows are not contaminated with process materials (e.g., free of hydrocarbon compounds); and

xi. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the Facility, but not intentional discharges from the cooling tower, such as “piped” cooling tower blowdown and drains;

b. “**Administrative Compliance Order**” or “**ACO**” shall mean the administrative compliance order, docket number CWA-02-2012-3101, dated December 16, 2011, that EPA issued against Defendant pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a);

c. “**Authorized Representative**” shall mean: (i) the president, secretary, treasurer, or vice-president of the Defendant in charge of a principal business function for Defendant, or any other person who performs similar policy or decision making functions for Defendant; or (ii) the Facility Operations Manager. The Facility Operations Manager meets the Authorized Representative definition when the Facility Operations Manager:

i. is authorized to make management decisions that govern the operation of the Facility including having the explicit or implicit duty of making major capital investment recommendations;

ii. is authorized to initiate and direct other comprehensive measures to assure

long-term environmental compliance with environmental laws and regulations;

iii. can ensure that the necessary systems are established or actions are taken to gather complete and accurate information for compliance with this Consent Decree; and

iv. is authorized to sign documents that have been assigned or delegated to the Facility Operations Manager in accordance with Defendant's corporate procedures;

d. "**Best Management Practice(s)**" or "**BMP(s)**" shall mean schedules of activities; construction of structures (*e.g.*, storm sewers, dikes); prohibition of practices; inspections, maintenance and replacement procedures; and other management practices to prevent or reduce the pollution of waters of the United States, as required in the 2006 Permit and New Permit, as defined below, for the Facility. BMPs also include treatment requirements, operation procedures, and practices to control Facility site run-on and runoff, spillage or leaks, sludge or waste disposal, or drainage from material storage. Further, BMPs includes schedules of activities; construction of structures (*e.g.*, storm sewers, dikes); prohibition of practices; inspections, maintenance and replacement procedures; and other management practices to maintain a conditional exclusion from NPDES Stormwater permitting for the Facility pursuant to 40 C.F.R. § 122.26(g);

e. "**Commonwealth**" shall mean the Commonwealth of Puerto Rico;

f. "**Complaint**" shall mean the complaint filed by the United States in this action captioned *United States v. Total Petroleum Puerto Rico Corporation*, Civ. No. 16-2641;

g. "**Consent Decree**" or "**Decree**" shall mean this Decree and all Appendices attached hereto (listed in Section XXIX), and any modifications made hereto;

h. "**CWA**" shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 *et seq.*;

i. "**Date of Lodging**" shall mean the date on which this Consent Decree is filed for

lodging with the Clerk of the Court of the United States District Court for the District of Puerto Rico;

j. Unless otherwise indicated, “**Day**” or “**Days**” as used herein, shall mean a calendar day or days. References to “**working days**” or “**business days**” shall mean days of the week other than Saturdays, Sundays, holidays, and days containing half-holidays. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or Commonwealth holiday, the period shall run until the next business day;

k. “**Defendant**” shall mean Total Petroleum Puerto Rico Corporation (“TPPRC”);

l. “**Discharge Monitoring Report**” or “**DMR**” shall mean the EPA discharge monitoring report form, which Defendant shall complete and submit in paper or in electronic form to EPA according to the 2006 Permit and New Permit, as defined below;

m. “**Effective Date**” shall mean the definition provided in Section XXIV (Effective Date);

n. “**Environmental Quality Board**” or “**EQB**” shall mean the Environmental Quality Board of the Commonwealth and any of its successor departments or agencies of the Commonwealth;

o. “**EPA**” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

p. “**Existing Storm Sewer System**” or “**Existing S3**” shall mean the Stormwater collection and discharge system and associated appurtenances (*e.g.*, oil/water separators, SP-001) that were built at the Facility on or before the Date of Lodging, which a set of surveying drawings titled “As-Built, Estudio Pluvial, Total Petroleum,” were prepared by R. Cabrera and Asociados, a licensed land surveyor, on August 27, 2012;

q. “**Facility**” shall mean Defendant’s Guaynabo Bulk Fuels Terminal located on the southern shore of San Juan Harbor at Km. 0.8 on State Road 28 between Roads 2 and 165 in the municipality of Guaynabo, Puerto Rico. The location of the Facility has the following coordinates: 18° 25’ 14.92” N and 66° 06’ 19.69” W;

r. “**Hydrology and Hydraulic Study**” or “**H/H Study**” shall mean: (i) the July 2012, September 2012 and March 2013 hydrology and hydraulic studies of the Stormwater run-on and run-off at the Facility, which Defendant submitted to EPA pursuant to paragraph 11, Part V of the ACO; and (ii) the hydrology and hydraulic studies of the Stormwater run-on and run-off at the Facility required to be performed and submitted by Defendant pursuant to Section VI (Compliance Measures) and Appendix A;

s. “**Interest**” shall mean interest at the rate specified in 28 U.S.C. § 1961. Unless otherwise stated, the applicable rate of interest shall be the rate in effect at the time the interest accrues;

t. “**mg/L**” shall mean milligrams per liter;

u. “**Multi-Sector General Permit**” or “**MSGP**” shall mean the NPDES Multi-Sector General Permit for the Stormwater Discharges Associated with Industrial Activity issued by EPA on June 4, 2015 (80 Fed. Reg. 34,403);

v. “**New Outfall(s)**” shall mean the new outfall(s) to be constructed as part of the New S3;

w. “**New Permit**” shall mean any of the following NPDES permits issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342:

- i. any subsequently issued individual NPDES permit that replaces the 2006 Permit; or

ii. the MSGP;

x. **“New Storm Sewer System”** or **“New S3”** shall mean the new Stormwater collection and discharge system and associated appurtenances (*e.g.*, oil/water separators, New Sampling Points, New Outfalls) that Defendant shall construct and operate at the Facility pursuant to Section VI (Compliance Measures) and Appendix A;

y. **“New Sampling Point(s)”** shall mean the new sampling point(s) to be constructed as part of the New S3 pursuant to Section VI (Compliance Measures) and Appendix A;

z. **“NPDES”** shall mean National Pollutant Discharge Elimination System;

aa. **“No Exposure”** shall mean that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product, in accordance with 40 C.F.R. § 122.26(g);

bb. **“Non-Structural Best Management Practices”** or **“Non-Structural BMPs”** shall mean those best management practices that will not require installation and/or construction of a control measure at the Facility as required in the 2006 Permit and New Permit or to maintain a conditional exclusion from NPDES Stormwater permitting for the Facility pursuant to 40 C.F.R. § 122.26(g), such as housekeeping practices and training of personnel;

cc. **“Normal Business Hours”** shall mean the Facility operational hours from 7:00 am to 4:00 pm (or any other operational hours modified in the future which shall be reflected in the Rain Gauge SOP and the Stormwater Sampling SOP), Monday through Friday, including federal

or Commonwealth holidays, in which Defendant shall:

- i. conduct monitoring activities in accordance with Table A-1 and Part I, Special Condition 13 of the 2006 Permit, and the requirements of the MSGP, whichever is applicable at the time of the activity, and
 - ii. apply during the implementation of the Rain Gauge SOP and the SW Sampling SOP required in this Consent Decree;
- dd. **“Outfall 001”** refers to the existing discharge outfall identified as outfall serial number 001 in the 2006 Permit, which is shown in the set of surveying drawings titled “As-Built, Estudio Pluvial, Total Petroleum,” prepared by R. Cabrera and Asociados, a licensed land surveyor, on August 27, 2012. The approximate location of Outfall 001 has the following coordinates: 18° 25’ 20.56” N and 66° 06’ 21.30” W;
- ee. **“Outfall 002”** refers to the former outfall that discharged Stormwater associated with industrial activity located at northeast corner of the Facility. The approximate location of the Outfall 002 has the following coordinates: 18° 25’ 17.51” N and 66° 06’ 12.76” W;
- ff. **“Paragraph”** shall mean a portion of this Consent Decree identified by an Arabic numeral, unless specified otherwise;
- gg. **“Parties”** shall mean the United States and Defendant;
- hh. **“Permit”** shall mean the 2006 Permit or the New Permit, whichever is applicable.
- ii. **“2006 Permit”** shall mean the individual NPDES Permit PR0000787 that EPA issued to Defendant’s Facility on May 8, 2006;
- jj. **“Plaintiff”** shall mean the United States of America;
- kk. **“Qualified Personnel”** shall mean those individuals who possess the knowledge and skills to assess conditions and activities that could impact Stormwater quality, and who can

also evaluate the effectiveness of control measures and the SWPPP at Defendant's Facility, as required in the Permit;

ll. **"Quarterly Progress Report(s)"** shall mean the deliverable report required to be submitted by Defendant pursuant to Section XI (Quarterly Progress Reports);

mm. **"Rain Gauge"** shall mean a device for collecting and measuring the amount of rain fall at the Facility;

nn. **"Resource Conservation and Recovery Act"** or **"RCRA"** shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*;

oo. **"Sampling Point 001"** or **"SP-001"** refers to the existing sampling point 001, which is shown in the set of surveying drawings titled "As-Built, Estudio Pluvial, Total Petroleum," prepared by R. Cabrera and Asociados, a licensed land surveyor, on August 27, 2012. The approximate location of the SP-001 has the following coordinates: 18° 25' 20.56" N and 66° 06' 21.30" W;

pp. **"Sampling Point Engineering Analysis Report"** shall mean the sampling point engineering analysis report Defendant submitted to EPA pursuant to paragraph 16, Part V of the ACO, which was prepared by the Technical Consulting Group on March 11, 2013;

qq. **"Section"** shall mean a portion of this Consent Decree identified by a Roman numeral, unless specified otherwise;

rr. **"Standard Operating Procedure(s)"** or **"SOP(s)"** shall mean the established or prescribed method(s) prepared by Defendant to be followed routinely for the performance of designated environmental compliance activities, operations, or in designated situations;

ss. **"Stormwater"** shall mean any stormwater runoff, surface runoff and drainage pursuant to the CWA and its implementing regulations;

tt. **“Stormwater Pollution Prevention Plan”** or **“SWPPP”** shall mean: (i) the Facility’s Stormwater Pollution Prevention Plan, dated June 26, 2012; and (ii) the Facility’s revised Stormwater Pollution Prevention Plan required to be submitted pursuant to Section VI (Compliance Measures);

uu. **“Structural Best Management Practices”** or **“Structural BMPs”** shall mean those best management practices that will require installation and/or construction of a Stormwater control measure as required in the 2006 Permit and New Permit or to maintain a conditional exclusion from NPDES Stormwater permitting for the Facility pursuant to 40 C.F.R. § 122.26(g), such as roof and dikes;

vv. **“Substantial Completion”** shall mean, when used in reference to Structural BMPs and construction projects required under this Consent Decree, the date, as certified by a Licensed Engineer in charge of a construction project who is authorized to conduct the engineering profession in the Commonwealth, when the Structural BMP or construction project or specified part thereof is sufficiently completed in accordance with the design drawings and specifications, such that the project or specified part thereof can be used to accomplish the purposes for which it was intended;

ww. **“Temporary Sampling Point 001”** or **“Temporary SP-001”** shall mean the temporary sampling point 001 located at the oil/water separator which is in proximate location to Outfall 001, and established by Defendant pursuant to the ACO for compliance with the effluent limits, monitoring and reporting requirements established in the 2006 Permit. The Temporary SP-001 is shown in the set of surveying drawings titled “As-Built, Estudio Pluvial, Total Petroleum,” prepared by R. Cabrera and Asociados, a licensed land surveyor, on August 27, 2012. The approximate location of the Temporary SP-001 has the following coordinates: 18° 25’ 20.05” N

and 66° 06' 21.17" W;

xx. “**United States**” shall mean the United States of America, acting on behalf of EPA;

and

yy. “**µg/L**” shall mean micrograms per liter.

VI. COMPLIANCE MEASURES

10. Except as otherwise indicated in this Consent Decree, at all times Defendant shall comply with the CWA, its implementing regulations, the Permit, any applicable Commonwealth statutes, regulations, and permits, and any New Permit Defendant subsequently applies for and obtains.

11. Defendant shall not discharge pollutants into waters of the United States from the Facility, except in compliance with all applicable federal and Commonwealth statutes, regulations, and permits, and this Consent Decree.

12. Temporary Sampling Point 001 (“Temporary SP-001”). Beginning on January 13, 2012, Defendant established a Temporary SP-001 at the manhole immediately downstream of the last oil/water separator, which is adjacent to Outfall 001. Defendant shall continue to maintain this Temporary SP-001, until Substantial Completion of the New S3.

13. Temporary SP-001 Sign. Beginning on January 13, 2012, Defendant posted and maintained a sign conspicuously at a safe location in close proximity to the Temporary SP-001. The sign includes the sampling point number (*e.g.*, Stormwater Sampling Point 001) in font large enough to be readily viewed during wet weather conditions. Defendant shall continue to maintain this sign until Substantial Completion of the New S3.

14. Rain Gauge. Beginning on January 1, 2012, Defendant began operating and maintaining a Rain Gauge at a suitable location at the Facility in accordance with the manufacturer’s specifications. Defendant shall continue to operate and maintain this Rain Gauge (and any

subsequent replacements) at a suitable location at the Facility in accordance with the manufacturer's specifications until Termination (Section XXV).

15. Rain Gauge SOP. Beginning on February 16, 2012, Defendant implemented the SOP for the rainfall data collection, management and recordkeeping document entitled "Rain Precipitation Data Collection Protocol" (hereinafter referred as "Rain Gauge SOP"), that Defendant submitted to EPA, dated July 10, 2012, as amended. Defendant shall continue to implement the Rain Gauge SOP, and its amendments thereto until Termination (Section XXV).

16. Rain Gauge Flow Chart. Beginning on February 16, 2012, Defendant began posting a copy of the Rain Gauge SOP's "Data Collection Key Flowchart" (hereinafter referred as "Rain Gauge Flow Chart") in English (and if needed, in Spanish also), at a suitable location near the Rain Gauge location. Defendant shall continue to do so until Termination (Section XXV).

17. Pollutant Monitoring. Beginning on January 1, 2012, Defendant began monitoring all the parameters (except for flow) at the Temporary SP-001 in accordance with the measurement frequency, sampling protocol and procedures established in the 2006 Permit. Defendant shall continue to do so until Substantial Completion of the New S3.

18. Stormwater Sampling SOP. Beginning on July 10, 2012, Defendant began implementing the Stormwater Sampling SOP at the Temporary SP-001 for the collection, analysis and reporting of Stormwater and Allowable Non-Stormwater discharges in the document entitled "Storm Water Sampling Protocol" (hereinafter referred to as "Stormwater Sampling SOP"), that Defendant submitted to EPA, dated July 10, 2012, as amended. Defendant shall continue doing so until Substantial Completion of the New S3.

19. Temporary Sampling Flow Chart. Beginning on February 16, 2012, Defendant posted a copy of the "Storm Water Sampling Flow Chart" (hereinafter referred to as the "Temporary

Sampling Flow Chart”) in Spanish and English, at a suitable location near Temporary SP-001. Defendant shall continue to post a copy of the Temporary Sampling Flow Chart until Substantial Completion of the New S3.

20. Compliance with Effluent Limits. Until the effective date of Facility’s coverage under the New Permit, or approval of conditional exclusion from NPDES Stormwater permitting, whichever occurs first, Defendant shall discharge Stormwater and Allowable Non-Stormwater through Outfall 001 in compliance with the 2006 Permit effluent limits (except for Color and Flow).

21. Until Substantial Completion of the New S3, Defendant shall continue to monitor at the Temporary SP-001 and report to EPA and EQB laboratory data for all parameters in the 2006 Permit, in accordance with Part I, Table A-1, Special Condition 10, Special Condition 13 and Part I.B of the 2006 Permit or in accordance with the New Permit.

22. Discharge Monitoring Reports. Notwithstanding the DMR provisions of the 2006 or any New Permit, beginning with the first Quarterly Progress Report, and until Termination or approval of conditional exclusion from NPDES Stormwater permitting, whichever occurs first, Defendant shall also submit a copy of the laboratory results for all the parameters monitored in DMRs in accordance with the requirements in Part I.B of the 2006 Permit or the New Permit. The First Quarterly Progress Report shall include the DMRs from samples collected from January 2012 until the last month applicable to the reporting period of the first Quarterly Progress Report. Defendant shall provide the information required in Special Condition 13.C of the 2006 Permit in a cover letter attached to the DMR.

23. Interim Limit for Surfactants. Beginning on January 13, 2012, and until twelve (12) months from the Date of Lodging, Defendant shall not discharge Surfactants (as Methylene blue active substances or MBAS) through Outfall 001 in concentrations above 311 micrograms per liter

(hereinafter referred as “µg/L”).

24. Operation and Maintenance of the Existing S3. No later than 90 Days after the Date of Lodging of this Consent Decree, Defendant shall clean the entire Existing S3. As part of the cleaning, TPPRC shall sample and analyze the materials removed for hazardous waste characteristics (e.g., full RCRA sampling and analysis applicable to the Facility). Based upon the analytical results, Defendant shall collect and dispose of the removed material in accordance with applicable federal, Commonwealth and municipal laws and regulations.

25. Defendant shall submit to EPA: (i) a report describing the activities and methods used to clean the Existing S3 including the amount of materials removed (e.g., water, sediments), the disposal location, and the transportation manifest; and (ii) a copy of the analytical results. This report and the analytical results shall be submitted in the subsequent Quarterly Progress Report (Section XI).

26. Stormwater Pollution Prevention Plan (“SWPPP”). Beginning on February 16, 2012, and until Termination (Section XXV), Defendant shall implement Structural and Non-Structural BMPs at the Facility to reduce, minimize and eliminate pollutants in Stormwater and Allowable Non-Stormwater discharges through Outfall 001, Outfall 002 and the New Outfall(s). Defendant’s implementation of the BMPs shall be conducted in accordance with the document entitled “Stormwater Pollution Prevention Plan” that Defendant submitted to EPA, dated June 26, 2012 (and any amendments thereto), and the Permit.

Compliance Measures Pertaining to the New S3

27. New Storm Sewer System (“New S3”). Defendant shall design, construct, operate and maintain a New S3 in accordance with all provisions of this Section and all plans, specifications and schedules prepared thereunder, including the milestones and schedules set forth in Appendix

A. The design of the New S3 shall take into consideration, at a minimum, the Facility expansion (*e.g.*, secondary containment structure for new tanks construction), the Existing S3, the H/H Studies, and Sampling Point Engineering Analysis Reports.

28. The function of the New S3, includes, but is not limited to: (i) the collection and conveyance of Stormwater runoff and Non-Stormwater runoff from the Facility into the receiving water; (ii) the establishment of monitoring and sampling location(s) that allows for Stormwater and Non-Stormwater pass through (*e.g.*, free flow) without any obstruction of flow (*e.g.*, flooding, backflow) and that represents the Stormwater runoff and Non-Stormwater runoff discharges from the Facility into the receiving water; and (iii) the establishment of primary and secondary flow measurement device(s) (*e.g.*, parshall flume).

29. Modification of the Rain Gauge SOP. Upon Substantial Completion of the New S3, Defendant shall modify the Rain Gauge SOP to address the establishment of New Outfall(s) and New Sampling Point(s) at the Facility.

30. Beginning at the time of Substantial Completion of the New S3 and until Termination (Section XXV), Defendant shall implement the modified Rain Gauge SOP at the Facility.

31. Modification of the Stormwater Sampling SOP. Upon Substantial Completion of the New S3, Defendant shall modify the Stormwater Sampling SOP to address the establishment of New Outfall(s) and New Sampling Point(s) at the Facility.

32. Beginning on Substantial Completion of the New S3 and until Termination (Section XXV), Defendant shall implement the modified Stormwater Sampling SOP at the Facility.

33. New Sampling Point(s). Upon Substantial Completion of the New S3, Defendant shall establish New Sampling Point(s) at the Facility. The New Sampling Point(s) location shall be representative of the Facility discharges and shall allow for free and uninterrupted flow, inspection

and monitoring of the discharge.

34. Monitoring at New Sampling Point(s). Beginning on Substantial Completion of the New S3 and until Termination (Section XXV), Defendant shall monitor all the parameters at the New Sampling Point(s) in accordance with the measurement frequency, sampling protocol and procedures established in the Permit.

35. Beginning at the time of Substantial Completion of the New S3 and until Termination (Section XXV), Defendant shall submit DMRs and chain of custody records to EPA and EQB for all parameters in the 2006 Permit, in accordance with Part I, Table A-1, Special Condition 10, Special Condition 13 and Part I.B of the 2006 Permit, or the applicable requirements of the DMRs and chain of custody records of the New Permit.

36. New Sampling Point(s) Sign. Upon Substantial Completion of the New S3, Defendant shall post and maintain a sign conspicuously at a safe location in close proximity to the New Sampling Point(s). At a minimum, the sign shall include the sampling point number (*e.g.*, Stormwater Sampling Point 001) in a font large enough to be readily viewed during wet weather conditions. After installation of the sign, Defendant shall provide a photograph of each New Sampling Point and its corresponding sign in the subsequent Quarterly Progress Report (Section XI).

37. Installation of Sampling Point Flow Chart at New Sampling Points. Upon Substantial Completion of the New S3, Defendant shall install and maintain the New Sampling Point Flow Chart(s) to close proximity of the location of the New Sampling Point(s). The New Sampling Point Flow Chart(s) shall be based on the modified Stormwater Sampling SOP described herein above. After installation of the New Sampling Point Flow Chart(s), Defendant shall provide a photograph of New Sampling Point Flow Chart(s) in the subsequent Quarterly Progress Report (Section XI).

38. Flow Measurement Device(s). Upon Substantial Completion of the New S3, Defendant shall install, maintain and operate primary and secondary flow measurement devices in accordance with the manufacturer's specifications at each New Sampling Point once approved by EPA. The selection of the primary and secondary flow measurement devices shall consider the results of the H/H Study, the Revised Sampling Point Engineering Analysis, and the New S3.

39. Flow Measurement SOP. Upon Substantial Completion of the New S3, Defendant shall develop, submit to EPA for review and approval, and implement an SOP for the operation of the primary and secondary flow measurement device(s), flow data collection, management, and record-keeping (hereinafter referred as "Flow Measurement SOP").

40. The Flow Measurement SOP shall address, at a minimum, procedures for adequate operation, maintenance and calibration (in accordance with the manufacturer's recommendation) of the devices, description of flow data recording and management procedures (e.g., person(s) authorized to read and record data), Flow Measurement SOP employee training, and record-keeping and reporting requirements. A flow measurement data log shall be prepared monthly and shall include the certification language and authorized signature according to the signatory requirements in 40 C.F.R. § 122.22.

41. Within thirty (30) Days or by such other deadline approved by EPA, Defendant shall modify the Flow Measurement SOP to address EPA's comments. Defendant shall, upon written approval by EPA, implement the Flow Measurement SOP and proceed to take any actions required by the approved Flow Measurement SOP.

42. Until Termination, Defendant shall measure, record and report flow according to the approved Flow Measurement SOP and the requirements of the Permit and provide the results to EPA through DMRs according to the requirements of the Permit.

43. Flow Measurement Flow Chart. Defendant shall include in the Flow Measurement SOP a flow chart describing the key points of the Flow Measurement SOP (hereinafter referred as “Flow Measurement Flow Chart”).

44. Upon Substantial Completion of the New S3, Defendant shall post and maintain a copy of the Flow Measurement Flow Chart (in Spanish and English) at a suitable location where the primary and secondary flow measurement devices are located.

45. Modification of the SWPPP. Upon Substantial Completion of the New S3, Defendant shall modify the SWPPP developed for the Facility to address required changes, including, but not limited to the following:

- i. description of potential pollutant sources as a result of the Facility operations, structures and construction of BMPs facilities constructed;
- ii. description of the New S3 and revision of the site map and storm sewer map according to the final design and specifications of the New S3;
- iii. description of the New S3 sampling point(s) and discharge location(s);
- iv. description of the Structural and Non-Structural BMPs (e.g., lube storage areas);
- v. schedule for New S3 routine inspection, maintenance and documentation;
- vi. inclusion of the New S3 Operation and Maintenance (“O&M”) manual; and
- vii. signatures and certifications.

46. NPDES Permitting and Conditional Exclusion from NPDES Stormwater Permitting. Upon Substantial Completion of the New S3, Defendant shall submit to EPA a notification indicating its preferable NPDES permitting option for the Facility in accordance with 40 C.F.R. Part 122. The notification shall include detailed information to demonstrate that the Facility is

eligible for coverage under the eligibility conditions of the MSGP, or that the Facility is eligible for conditional exclusion from NPDES Stormwater permitting in accordance with 40 C.F.R. § 122.26(g).

47. If Defendant opted to seek coverage under the MSGP, Defendant's documentation shall include, but not be limited to the following:

i. a written certification and supporting documentation that the Facility meets the eligibility requirements under the Endangered and Threatened Species and Critical Habitat Protection requirements included in the MSGP;

ii. a written certification and supporting documentation that the Facility meets the eligibility requirements under the Historic Properties Preservation requirements included in the MSGP;

iii. a written certification and supporting documentation that all discharges of pollutants through the New Sampling Point(s) and New Outfall(s) are eligible for coverage under the MSGP;

iv. any other information and documentation deemed necessary to meet the eligibility requirements of the MSGP; and

v. an unsigned copy of a complete and accurate Notice of Intent (in paper form) for the Facility pursuant to instructions contained in the form.

48. If Defendant opted to seek conditional exclusion from NPDES Stormwater permitting for the Facility in accordance with 40 C.F.R. § 122.26(g), Defendant's documentation shall include, but not be limited to, the following:

i. a certification that all its discharges from the Facility are composed entirely of Stormwater;

ii. photo documentation showing that all industrial materials and activities at the Facility are protected by a storm resistant shelter to prevent exposure to rain and runoff in accordance with 40 C.F.R. § 122.26(g); and

iii. an unsigned copy of a complete and accurate “No Exposure Certification For Exclusion From NPDES Stormwater Permitting” form (Appendix K of the MSGP - NPDES Form 3510-11) for the Facility pursuant to instructions contained therein and the “Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on No Exposure of Industrial Activities to Storm Water” (EPA 833-B-00-001, June 2000).

49. Submittal for Notice of Intent under the MSGP or No Exposure Notification. Within thirty (30) Days of EPA’s notification to Defendant of the Facility’s eligibility under the MSGP or Facility’s eligibility for conditional exclusion from NPDES Stormwater permitting, Defendant shall submit a complete and accurate electronic Notice of Intent in accordance with the terms and conditions of the MSGP, or a complete and accurate electronic “No Exposure Certification for Exclusion from NPDES Stormwater Permitting” for the Facility in accordance with 40 C.F.R. § 122.26(g).

50. Issuance of the Individual NPDES Permit. In the event that the Facility is ineligible for coverage under the MSGP, or that the Facility is ineligible for conditional exclusion from NPDES Stormwater permitting in accordance with 40 C.F.R. § 122.26(g), or if EPA determines to regulate the discharges of pollutants from the Facility under an individual NPDES Permit, Defendant shall submit to EPA, within ninety (90) Days from EPA’s notification to Defendant that the Facility is ineligible for coverage under the MSGP, or within ninety (90) Days from EPA’s notification to Defendant that the Facility is ineligible for conditional exclusion from NPDES Stormwater permitting, or within ninety (90) Days from when EPA has determined to regulate the discharge

of pollutants from the Facility under an individual NPDES Permit, a complete and accurate individual NPDES permit applications (*e.g.*, Form 1, Form 2C, Form 2F) for the Facility pursuant to 40 C.F.R. § 122.21.

51. Beginning on the effective date of the New Permit, and continuing until Termination (Section XXV), Defendant shall comply with the conditions and requirements of the New Permit.

52. Other Permits and Endorsements. Where any compliance obligations under this Consent Decree require Defendant to obtain a federal, Commonwealth, or municipal permit, approval or endorsement, Defendant shall submit a timely and complete application and take all other actions necessary to obtain such permit, approval or endorsement. Defendant may seek relief under Section XIII (Force Majeure) of this Consent Decree for a “force majeure” delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, a permit, approval or endorsement required to fulfill such obligation, provided that Defendant has submitted a timely and complete application and/or information and has taken all other actions necessary to obtain any such permit, approval or endorsement in accordance with Section XIII (Force Majeure).

53. Stormwater Training. Within thirty (30) Days after the date of Substantial Completion of the New S3, Defendant shall develop and implement a Stormwater training program for all employees (*e.g.*, members of the Pollution Prevention Team, Operators) at the Facility with responsibilities that directly involve compliance with the Permit and this Consent Decree. The training shall include instruction in Stormwater management, operation and management of the New S3, Flow Measurement SOP, SWPPP, Stormwater monitoring, Structural and Non-Structural BMPs, record-keeping and reporting, Rain Gauge SOP, Sampling SOP, and other topics that Defendant deems necessary to comply with this Consent Decree and the Permit.

54. Beginning in December 2014 and every year thereafter until Termination (Section XXV), the Facility Operations Manager, Environmental Supervisor, the SWPPP's Pollution Prevention Team members, and all other employees at the Facility with operational responsibilities that directly involve Stormwater compliance, or that could directly impact Stormwater discharges, shall complete an annual Stormwater training course, either through an in-person session or a computer-based course. Defendant must submit confirmation of the annual training with the names and titles of the employees, including the date of completion, to EPA in the next Quarterly Progress Report after the completion of the Stormwater training course.

VII. REVIEW AND APPROVAL PROCEDURES

55. Unless indicated otherwise in this Consent Decree, the review and approval procedures set forth in this Section shall apply with respect to any plan, report, model, program, schedule, document, or other deliverables that Defendant is required to submit for EPA approval pursuant to this Consent Decree as follows:

a. After receipt and review of any plan, report, model, program, schedule, document or other deliverables that Defendant is required to submit for EPA approval pursuant to this Consent Decree, EPA may: (i) approve the submission; (ii) approve the submission or portions of the submission with specified conditions; (iii) approve part of the submission and disapprove the remainder; or (iv) disapprove the submission and direct Defendant to modify the submission;

b. In the event of approval of the complete submission, Defendant shall proceed to take all actions required by the plan, report, model, program, schedule, document or other deliverables, in accordance with the schedule contained therein, as approved in writing by EPA;

c. In the event of written approval of portions of the submission or approval with

specified conditions, Defendant shall proceed to take the actions identified in the non-deficient portion of the plan, report, model, program, schedule, document or other deliverables, or portion thereof, if severable, in accordance with any applicable conditions specified by EPA, subject only to Defendant's right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the conditions imposed with regard to the disapproved portions. Implementation of any non-deficient portion of the submission shall not eliminate the potential for Defendant to incur stipulated penalties pursuant to Section X (Stipulated Penalties), based on Defendant's failure to meet approved requirements of the submission, so long as such the approved requirements are technically severable from the disapproved portion(s) of the submission.

56. Upon receipt of a notice of disapproval of all or part of the submission from EPA, Defendant shall, within thirty (30) Days (or any other extended period authorized by EPA), correct the deficiencies as directed by EPA's written comments and resubmit the plan, report, model, program, schedule, document or other deliverables for approval. Any stipulated penalties applicable to the original submission, as provided in Section X (Stipulated Penalties), shall accrue during the thirty-Day (30) period (or extended period provided by EPA), but shall not be payable unless the resubmission is untimely or is disapproved in whole or is materially deficient.

57. In the event that the resubmitted plan, report, model, program, schedule, document or other deliverables, or portion thereof, is disapproved by EPA, EPA may again require Defendant to correct the deficiencies in accordance with the preceding Paragraphs, subject to Defendant's right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) and the right of EPA to seek stipulated penalties as provided in Section X (Stipulated Penalties), unless

EPA determines that the disapproval is based on a reasonable and justifiable explanation by Defendant and/or inadequate instructions by EPA.

58. If Defendant timely submits or resubmits an item for review and approval, or comment under this Consent Decree, and if EPA fails to approve, provide comments or otherwise act on a submittal within ninety (90) Days of receipt of the submittal, Defendant shall be entitled to an extension of any interim or final deadline as long as Defendant can demonstrate it will not be able to meet the deadline as a result of the length of the review process. Any such request must be in writing and must identify the deadline for which an extension is requested, the length of the extension requested, and set forth the basis for each such request. In the event that EPA should disapprove, in whole or in part, the requested extension, Defendant may invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution).

59. If Defendant submits or resubmits a plan, report, model, program, schedule, document or other deliverable that fails to contain all of the required elements as set forth in the appropriate Section or Appendix of this Consent Decree, Defendant shall be deemed to have failed to make the submission, unless Defendant invokes the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution). In the case of a submission or resubmission that fails to contain all the required elements, stipulated penalties begin to accrue on the date the submission or resubmission was due.

VIII. CIVIL PENALTY

60. Within thirty (30) Days after the Effective Date (Section XXIV), Defendant shall pay the sum of \$345,000 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.

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

The FLU will provide the payment instructions to:

Mr. Nicolas Garnier
Chief Financial Officer
Total Petroleum Puerto Rico Corp.
P. O. Box 362916
San Juan, PR 00936-2916
Telephone (787) 783-4625
Facsimile (787) 783-0407
E-mail: nicolas.garnier@tpprc.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices). At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-10983 and the civil action number of this case) to:

(i) EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and

(ii) the United States via email or regular mail in accordance with Section XIV (Notices).

62. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, Commonwealth, or local income tax.

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECT

63. Defendant shall implement a SEP involving the installation of artificial reef modules (“Taíno Reefs”) to expand and finalize the Condado Lagoon Taíno Coral Trail and Reef Enhancement Project, further described in Appendix B (San Juan Bay Estuary HJR Reefscaping Proposal) of this Consent Decree. The purpose of this SEP is to provide artificial habitats for reef fish that use the San Juan Bay Estuary System, while improving aesthetics for recreational swimmers.

64. Defendant has selected HJR Reefscaping as a contractor to assist with implementation of the SEP phases (including permitting, construction and placement). Defendant shall execute a contract with the contractor for the terms and conditions acceptable for TPPRC to carry out the completion of the SEP. Defendant shall execute the contract no later than ninety (90) Days following entry of this Consent Decree.

65. The SEP requires that Defendant construct, at a minimum, 30 units of the Taíno Reefs for placement in the Condado Lagoon area, as specified by the San Juan Bay Estuary HJR Reefscaping Proposal (Appendix B). The Taíno Reefs will be composed of a mixture of cement, gravel and

water that meet design specifications set forth in Appendix B. Once the Taíno Reefs are built and cured, they will be placed by forklift on a flatbed vehicle that will transport the Reefs to the Condado Lagoon. The Taíno Reefs will be placed in the water through the use of a boom truck, and once in the water, each artificial reef will be buoyed by two (2) lift bags and towed to the designated areas of placement, as identified in Appendix B. The lift bags will be located above the selected site, and then the Taíno Reefs will be slowly lowered into its place.

66. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Decree within one (1) year following the Effective Date (Section XXIV). For purposes of this section, “satisfactory completion” shall mean, at a minimum, performing all tasks identified in Appendix B, which includes obtaining any applicable permits, as well as design and deployment of at least thirty (30) Taíno Reefs in the designated areas of Condado Lagoon.

67. Where any portion of the SEP work requires a federal or state permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approval. The Defendant may seek relief under the provisions of Section XIII (Force Majeure) of this Consent Decree for any delay in the performance of the SEP resulting from failures or delays in obtaining any permit required for the SEP if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain such permits or approvals. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

68. With regard to the satisfactory completion of the SEP, and in addition to the SEP Completion Report, Defendant shall certify the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the costs of the SEP is at least \$40,000;

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

c. that the SEP is not a project that Defendant was planning or intending to perform or implement other than in settlement of the claims resolved in this Consent Decree;

d. that Defendant has not received and will not receive credit for the SEP in any other enforcement action;

e. that Defendant has not received and will not receive reimbursement for any portion of the SEP from any other person or entity;

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

g. that Defendant is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP;

h. that Defendant has inquired whether the San Juan Bay Estuary Program, and HJR Reefscaping are a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the San Juan Bay Estuary Program, and/or HJR Reefscaping, that neither is a party to such a transaction; and

i. that Defendant is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activities described in the SEP. Defendant further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activities described in the SEP, nor have the same activities been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two (2) years of the date of this Consent Decree (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

69. SEP Completion Report. Within thirty (30) Days after completion of the SEP, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XIV (Notices). The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree using the following language: “I certify under penalty of perjury under the laws of the United States that the information contained in this submission is true and correct”; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP with a quantification of the benefits, if feasible.

70. EPA may, in its sole discretion, may require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's SEP Completion Report.

71. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not it has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, Stipulated Penalties may be assessed under Section X (Stipulated Penalties) of this Consent Decree. Defendant agrees that failure to submit the SEP Completion Report required by Paragraph 69, above, shall be deemed a violation of this Consent Decree, and Defendant shall become liable for stipulated penalties pursuant to this Consent Decree.

72. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XVII (Dispute Resolution) of this Consent Decree. No other disputes arising under this Section shall be subject to Dispute Resolution.

73. Each submission required under this Section shall be signed by an Authorized Representative with knowledge of the SEP and shall bear the certification language set forth in Paragraph 95.

74. Public Statements. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Consent Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *United States v. Total Petroleum Puerto Rico Corp.*, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act." Any public statement, oral or written, in print, film, or other media, made by Defendant in Spanish making reference to the SEP under this Consent Decree shall include the following language: "Este Proyecto se ejecuta por un acuerdo de una acción legal, *United States v. Total Petroleum Puerto Rico Corp.*, promovida por la Agencia Federal de Protección Ambiental bajo la autoridad del estatuto federal

de Agua Limpia.” If after completion and approval of the SEP, Defendant wishes to continue to cooperate with the San Juan Bay Estuary Reef Program, it shall do so at its discretion, and shall no longer be bound by the SEP conditions of this Consent Decree.

75. For federal and income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred, in performing the SEP.

X. STIPULATED PENALTIES

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

77. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section VIII (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000.00 per Day for each Day that the payment is late.

78. Interim Effluent Limits, Effluent Limits, Monitoring and Reporting Requirements. From the Date of Lodging, the following stipulated penalties shall accrue per violation of an effluent limit, monitoring requirement, and reporting requirement established in the 2006 Permit (not including Color and Flow); an effluent limit, monitoring requirement, and reporting requirement established in the New Permit; and the interim effluent limit for Surfactants in this Consent Decree. The stipulated penalty for such exceedance shall be \$1,500 per effluent limit or interim effluent limit for each sampling event.

79. Compliance Measures. For each Day that Defendant fails to complete the work specified in accordance with the applicable schedules, including all benchmarks and interim deadlines, developed pursuant to Section VI (Compliance Measures), late deliverable of DMRs and noncompliance with monitoring requirements, and for each Day that Defendant fails to submit a report or plan as required by this Consent Decree and the Appendix A hereto, unless excused and/or extended by EPA at the request of Defendant prior to the schedule date, or under Section XIII (Force Majeure), or by EPA as part of discussions conducted pursuant to Section XVII (Dispute Resolution), Defendant shall be liable for stipulated penalties as follows:

<u>Period of noncompliance</u>	<u>Penalty per Day per violation</u>
1-10 Days	\$250.00
11-60 Days	\$500.00
61-120 Days	\$1,000.00
Over 120 Days	\$1,500.00

80. SEP Compliance. If Defendant fails to implement the SEP, or halts or abandons work on the SEP, Defendant shall pay a Stipulated Penalty of \$80,000. The penalty under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

81. If Defendant fails to satisfactorily complete the SEP by the deadlines outline in Paragraph 66, including failing to send a complete SEP Completion Report pursuant to Paragraph 69, Defendant shall pay stipulated penalties for each Day it fails to satisfactorily complete these requirements, as follows:

<u>Period of noncompliance</u>	<u>Penalty per Day per violation</u>
1-14 Days	\$1,500.00

15–30 Days	\$2,500.00
Over 31 Days	\$5,000.00

82. Payment of stipulated penalties pursuant to this Section shall be made within thirty (30) Days following submittal of the Quarterly Progress Report's required filing date for the period in which the violation(s) occurred.

83. All stipulated penalties under this Section shall begin to accrue on the Day after performance is due or 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 Consent Decree.

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

85. Stipulated penalties shall continue to accrue as provided in Paragraphs 76 through 91 during any Dispute Resolution (Section XVII), but need not be paid until the following occurs:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, the Defendant shall pay accrued penalties determined to be owing, together with interest, accruing from the date the penalties are determined to have been owed through the date of payment, to the United States within thirty (30) Days of the Effective Date (Section XXIV) of the agreement or the receipt of EPA's decision or order, as applicable;

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

c. If any party appeals the District Court's decision, the Defendant shall pay all accrued penalties determined to be owing, together with interest, within thirty (30) Days of receiving the final appellate court decision.

86. The Defendant shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 82 and with the confirmation notices required by Section XIV (Notices), 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.

87. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant 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 Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations, including seeking injunctive or other relief for Defendant's failure to implement the injunctive relief provisions of this Consent Decree. Where a violation of this Consent Decree is also a violation of the CWA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

88. Obligations Prior to the Effective Date. Upon the Effective Date (Section XXIV), the stipulated penalty provisions of this Consent Decree shall be retroactively enforceable with regard to any and all violations in Section VI (Compliance Measures) that have occurred after the date of the Decree's lodging, but prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

89. Defendant shall pay stipulated penalties owing to the United States in the manner set forth in, and with the confirmation notices required by, Section VIII (Civil Penalty), 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.

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

91. Subject to the provisions of Section XIX (Effect of Settlement/Reservation of Rights), the stipulated penalties provided in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XI. QUARTERLY PROGRESS REPORTS

92. Beginning after the Date of Lodging, Defendant shall submit to EPA written quarterly status reports ("Quarterly Progress Reports") on January 28 covering the October 1 to December 31 quarterly period, April 28 covering the January 1 to March 31 quarterly period, July 28 covering the April 1 to June 30 quarterly period, and October 28 covering the July 1 to September 30 quarterly period, until Termination (Section XXV). The first Quarterly Progress Report due to EPA may cover a period of less than three (3) months depending on the Date of Lodging. Upon request of TPPRC, the United States may, in the unreviewable exercise of its discretion, reduce

the filing frequency of the Quarterly Progress Reports, and reduce the content of the report. The Quarterly Progress Reports content must describe the current status and progress of Defendant's actions taken to comply with Sections VI through X (Compliance Measures, Review and Approval Procedures, Civil Penalty, Supplemental Environmental Project, and Stipulated Penalties, respectively) and Appendices A and B. The Quarterly Progress Reports shall at a minimum identify the following:

a. the specific activities undertaken by Defendant relating to the completion of work required under the compliance schedules specified in this Consent Decree, including but not limited to the expected date for the Substantial Completion of any of the remedial actions, capital improvements or any other actions identified in Section VI (Compliance Measures), and identification of those requirements which have been accomplished since the previous Quarterly Progress Report, including the dates of Substantial Completion of any of the remedial actions, capital improvements or any other actions identified in Section VI (Compliance Measures);

b. the specific activities undertaken by Defendant relating to the completion of work required under the SEP specified in this Consent Decree, including but not limited to the expected date for the completion of the SEP, and identification of those requirements which have been accomplished since the previous Quarterly Progress Report, including the dates of completion of any interim deadlines for completion of the SEP contained in Section IX (Supplemental Environmental Project), or Appendix B;

c. any impediments Defendant encountered in meeting the compliance schedules and SEP deadlines under this Consent Decree, the steps that Defendant has taken to overcome such impediments, and the steps that Defendant will take to overcome such impediments, including the anticipated dates by which such steps will be taken;

d. a description of the requirements of this Consent Decree subject to stipulated penalties which were not complied with, the dates of such non-compliance and the computations made in determining the amount of stipulated penalties due; and

e. any change in Defendant personnel, as well as any change in the contractors hired to comply with the requirements of this Consent Decree.

93. If Defendant has already submitted a deliverable to EPA, Defendant shall in the Quarterly Progress Report reference that deliverable and its date of submission instead of submitting to EPA another copy of that deliverable.

94. The above reporting requirements do not relieve Defendant of the obligation to submit reports or information required under the CWA, the regulations promulgated thereunder, the Permit, or any other permit or local or federal law.

95. All Quarterly Progress Reports and other submissions required pursuant to this Consent Decree shall be in English and contain a certification signed by an Authorized Representative. The certification shall read as follows:

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

XII. QUARTERLY PROGRESS MEETINGS

96. Representatives of EPA and Defendant shall convene informally on at least a quarterly basis pursuant to a mutually agreeable schedule to discuss Defendant’s ongoing progress under the Consent Decree. The meeting should cover at least the following subjects:

- a. progress in the implementation of the actions required by this Consent Decree;
- b. potential problems that may adversely affect progress in implementing the actions required by this Consent Decree; and
- c. measures that Defendant intends to take to correct problems and deficiencies that Defendant encountered or that EPA found in its inspections of the Facility or the SEP site covered by this Consent Decree.

97. If, as a result of discussions at the Quarterly Progress Meetings, EPA and Defendant agree on actions to be taken and a schedule for such actions that are not otherwise provided for by this Consent Decree, the Parties shall, after consultation with counsel, follow the procedures set forth in Section XXII (Modification).

XIII. FORCE MAJEURE

98. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant 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 Defendant’s financial inability to perform any obligation under this Consent Decree.

99. 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, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA according to Section XIV (Notices), within seventy two (72) hours of when Defendant first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendant 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; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant 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. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

100. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event 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 the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify

Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

101. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

102. If Defendant elects to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendant 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 a force majeure event, 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 Defendant complied with the requirements of Paragraphs 98 and 99, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIV. NOTICES

103. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing, in English, include a reference to the case name, caption and number of this action, and addressed as follows:

As to the United States Department of Justice:

By email: eescasemanagement.enrd@usdoj.gov
Re: DJ # 90-5-1-1-10983

By mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-10983

As to EPA:

Chief, Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
United States Environmental Protection Agency, R2
City View Plaza II – Suite 7000
State Road # 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069

AND

Chief, Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

As to Defendant:

Pierre Emmanuel Bredin
General Manager
Total Petroleum Puerto Rico Corp.
PO Box 362916
San Juan, PR 00936-2916
Telephone (787) 749-8807
E-mail: pierre-emmanuel.bREDIN@tpprc.com

AND

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Rafael Rivera-Yankovich, Esq.
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Union Plaza, Suite 311
San Juan, Puerto Rico 00918
Telephone (787) 200-3077 / 751-8999
Cellular (787) 647-1913
Facsimile. (787) 763-7760
E-mail: rry@tcmrslaw.com

104. Delivery shall be considered complete upon deposit of the material item at issue in the express mail, express courier service, or certified mail, or as otherwise specifically provided herein.

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

106. Documents required to be submitted under the terms of this Consent Decree may be submitted electronically, to both the United States and EPA, provided a paper copy is timely submitted to the Chief, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, United States Environmental Protection Agency, in Guaynabo, Puerto Rico.

XV. ACCESS TO THE FACILITIES

107. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States, EPA and its representatives, including attorneys, contractors and consultants pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVI. RECORD RETENTION

108. Unless otherwise authorized by EPA or specified in this Consent Decree, Defendant shall preserve an original or a copy of all records, logs, and documents required to be kept under the CWA, any applicable regulations promulgated thereunder, and pursuant to the provisions of this Consent Decree, for at least three (3) years after the Termination of this Consent Decree, or as long as is required under the CWA, regulation, or the Permit, if longer. Such records will be retained at the Facility and be readily available to EPA upon request. Drafts of documents for which a final version has been submitted to EPA pursuant to this Consent Decree need not be retained. Upon request by EPA, Defendant shall provide copies to EPA of any such records, logs, and documents during the periods Defendant is required to preserve the original or copy of such records, logs, and documents. Provided, however, that Defendant may eliminate documents after five (5) years upon written notice to EPA listing the documents Defendant plans to destroy and with EPA's written approval. If EPA does not respond in writing within ninety (90) Days of receiving such notice in hard copy and electronic mail, Defendant may destroy such documents.

109. For purposes of this Section and Section X (Stipulated Penalties), Defendant shall be required to preserve, in addition to the recordkeeping requirements in the Permit and the NPDES regulations, at least the following records, logs, and documents:

- a. Facility log books;
- b. Computerized or other written maintenance management system files in which routine Facility maintenance information is loaded or otherwise recorded including job orders for corrective or preventive maintenance for the Facility;
- c. Inspection check list or report performed at the Facility, compiled daily, weekly, monthly, semi-annually, or annually, as applicable; and

d. Police reports documenting employee security and/or vandalism-related incidents affecting the operation of the Facility.

XVII. DISPUTE RESOLUTION

110. 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. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Consent Decree.

111. 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 Defendant 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 ten (10) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

112. Formal Dispute Resolution. Defendant 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 Defendant's position and any supporting documentation relied upon by Defendant.

113. The United States shall serve its Statement of Position within forty five (45) Days of receipt of Defendant's 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 Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

114. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant'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.

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

116. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 112 (Formal Dispute Resolution) pertaining to: the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring review and approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and

all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant 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 Consent Decree, in any other dispute brought under Paragraph 112 (Formal Dispute Resolution), Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and would better further the objectives of the Consent Decree.

117. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent 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 85. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XVIII. COMPLIANCE WITH APPLICABLE LAWS

118. This Consent Decree in no way relieves Defendant of its responsibility to comply with all applicable federal, Commonwealth and local laws, regulations, and permits, and compliance with this Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits, except as otherwise provided in this Consent Decree or in the CWA. Defendant shall be responsible for obtaining all federal, Commonwealth, or local permits that are necessary for the performance of any obligations imposed in this Consent Decree. This Consent Decree shall not be construed as a determination of any issue related to any federal, Commonwealth, or local permit,

nor shall it be construed to be an NPDES permit or a modification of any NPDES permit or other permit.

119. Nothing in this Consent Decree relieves Defendant of any requirements imposed on it relating to the CWA, laws of the Commonwealth, or any orders or permits issued pursuant to the foregoing, except as otherwise provided in this Consent Decree or in the CWA.

120. In the Quarterly Progress Meetings, the Parties agree to discuss significant changes in law and/or regulations and whether such changes may require modification of this Consent Decree pursuant to Section XXII (Modification).

XIX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

121. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action and the Administrative Compliance Order through the Date of Lodging.

122. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in the preceding Paragraph. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in the preceding Paragraph. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's facilities, whether related to the violations addressed in this Consent Decree or otherwise.

123. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant's violations, Defendant 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 121 (Effect of Settlement).

124. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, Commonwealth, and local laws, regulations, and permits; and Defendant's compliance with this Consent 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 Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, or with any other provisions of federal, Commonwealth, or local laws, regulations, or permits.

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

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

XX. COSTS OF SUIT

127. 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 Defendant.

XXI. PUBLIC PARTICIPATION

128. 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. Defendant 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 Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XXII. MODIFICATION

129. 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 Consent Decree, it shall be effective only upon approval by the Court.

130. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XVII (Dispute Resolution), provided, however, that instead of the burden of proof provided by Paragraph 116 (Dispute Resolution), 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).

XXIII. RETENTION OF JURISDICTION

131. The Court shall retain jurisdiction over this case until Termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections XVII (Dispute Resolution) or Section XXII (Modification) or effectuating or enforcing compliance with the terms of this Consent Decree.

XXIV. EFFECTIVE DATE

132. 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. Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XXV. TERMINATION

133. After Defendant has: (a) completed the requirements of Section VI (Compliance Measures); (b) complied with Appendices A and B; (c) has complied with all other requirements of this Consent Decree (*e.g.*, Quarterly Progress Reports); (d) has paid the civil penalty as well as any accrued stipulated penalties as required by this Consent Decree; and (e) has a New Permit issued to the Facility under Section 402 of the CWA, 33 U.S.C. § 1342, that is current and valid, as defined by Section V (Definitions), Paragraph 9.w.i. or ii., for all New Outfall(s), or in the

alternative to an NPDES permit, Defendant has obtained approval from EPA and filed a complete and accurate electronic No Exposure Certification For Exclusion From NPDES Stormwater Permitting for the Facility pursuant to 40 C.F.R. Part 122.26(g), Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation (*e.g.*, Final Compliance Report).

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

135. If the United States does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section XVII. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Section XVII (Dispute Resolution), until sixty (60) Days after service of its Request for Termination.

XXVI. SIGNATORIES/SERVICE

136. Each undersigned representative of Defendant, EPA, 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.

137. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent 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.

XXVII. INTEGRATION

138. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements, such as the Administrative Compliance Order, docket number CWA-02-2012-3101, and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXVIII. FINAL JUDGMENT

139. 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 Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

XXIX. APPENDICES

140. "Appendix A" is attached to and part of this Consent Decree. This appendix includes the implementation schedule for the New S3.

141. "Appendix B" is attached to and part of this Consent Decree. This appendix includes the SEP.

Dated and entered this __ Day of _____, 2016.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Total Petroleum Puerto Rico Corporation*, Civil No. 16-2641.

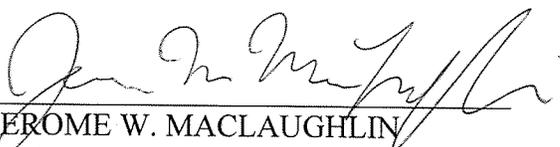
FOR THE PLAINTIFF UNITED STATES OF AMERICA:

9/12/2016

Date



ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice



JEROME W. MACLAUGHLIN
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

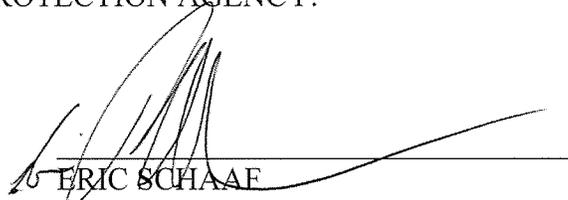
ROSA E. RODRIGUEZ-VELEZ
United States Attorney
District of Puerto Rico

HECTOR E. RAMIREZ
Assistant United States Attorney
Chief, Civil Division
Torre Chardon, Suite 1201
350 Carlos Chardon Avenue
San Juan, Puerto Rico 00918

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Total Petroleum Puerto Rico Corporation*, Civil No. 16-2641.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: 7/27/16



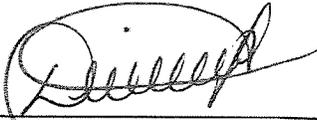
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Total Petroleum Puerto Rico Corporation*, Civil No. 16-2641.

FOR THE DEFENDANT TOTAL PETROLEUM PUERTO RICO CORPORATION:

Dated: 9/12/2016



DENISE RODRIGUEZ, ESQ.
Legal Manager
Total Petroleum Puerto Rico Corp.
P.O. Box 362916
San Juan, Puerto Rico 00936-2916
Tel. (787) 749-7793 / Fax (787) 783-0407

Dated: 9/12/2016



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APPENDIX A
IMPLEMENTATION SCHEDULE FOR NEW S3

Number	Milestone	Deadline	Milestone Description and Required Actions
1	Submittal of New S3 Conceptual Design Drawings and Engineering Report	<p>June 27, 2014, as amended on March 20, 2015</p> <p>EPA provided written approval by letter dated June 2, 2015</p>	<p>Submit to EPA, for review and approval, a conceptual design report for the New S3. This submittal shall include but not be limited to:</p> <ol style="list-style-type: none"> 1. the configuration drawings of the New S3 including at a minimum: New Outfall(s), New Sampling Point(s), oil/water separator(s), dikes/berms to re-direct flow, dike/berms to prevent inflow, flow measurement devise(s), and other main components; 2. a determination of the design flows, including a revised H/H study (if required by federal, state, and municipal entities); 3. a description of all work required to obtain permits, clearances, endorsements, detailed design, bidding, construction, startup and debugging; 4. a description of all work required to eliminate all discharges from Outfall 001 and Outfall 002 (e.g., abandonment of the Existing S3); 5. a general description of each milestone required for construction and operation of the New S3; 6. a general description of all permits and endorsements required by federal, state and municipal laws and regulations; 7. a cost estimate for the construction of the New S3, including design, planning, permitting, inspections, environmental clearances, and construction; and 8. project schedule.

Number	Milestone	Deadline	Milestone Description and Required Actions
2	Environmental Review Process	October 2, 2014	<ol style="list-style-type: none"> 1. Prepare, complete and file all documents (<i>e.g.</i>, application forms) to secure the environmental review process clearance of the New S3; and 2. Provide a copy to EPA of all the information and documents submitted and evidence of such submittals, and the responses issued by the Agencies.
3	Submittal of Final Design Plans and Specifications	August 31, 2015	<ol style="list-style-type: none"> 1. Complete the detailed design, drawings and specifications for the construction and operation of the New S3; 2. Submit to EPA a detailed design report, which shall include at a minimum the following documents: construction drawings, construction specifications, and revised cost estimate for the construction of the New S3.

Number	Milestone	Deadline	Milestone Description and Required Actions
4	Pre-Construction Consultations and Endorsements; Contractor and Inspector Selection; and Construction and Environmental Permits	March 28, 2016	<ol style="list-style-type: none"> 1. Prepare complete and accurate information and submit documents (e.g., application forms, drawings, studies) to secure the pre-construction consultation and endorsement process followed by the corresponding construction and environmental permits from all applicable federal, state and/or municipal entities; 2. Proceed with the construction contractor and inspector bidding and selection process; 3. Provide evidence of submittals and approvals of applicable pre-construction consultations and endorsements documents, including but not limited to the construction and environmental permit applications (e.g., Notice of Intent for construction activities) submitted to federal, state and municipal entities; 4. Provide information concerning the construction company(ies) and construction inspector contracted by Defendant for the construction of the New S3. <ol style="list-style-type: none"> a. With respect to the construction company(ies), the information shall include the officers of the company(ies), their addresses and telephone numbers, and the person(s) in charge of the day-to-day construction activities at the Facility, including his telephone number; and b. With respect to the construction inspector, the information shall include the name of the licensed inspectors and assistants, their addresses and telephone numbers, a copy of the licenses issued to perform the engineering profession in the Commonwealth of Puerto Rico, and the principal inspector in charge of the construction project; and 5. Provide notification to the construction company(ies) about their responsibilities to secure NPDES permit coverage for construction activities.

Number	Milestone	Deadline	Milestone Description and Required Actions
5	Commencement of Construction Activities	May 27, 2016	<ol style="list-style-type: none"> 1. Provide notice of the date of mobilization by the construction company(ies) contracted; 2. Commence construction according to the construction permits issued by federal, state and municipal entities; and 3. Provide the construction contractor(s) detailed construction schedule.
6	Construction Substantial Completion	March 23, 2017	<ol style="list-style-type: none"> 1. Achieve Substantial Completion; 2. Provide a certification signed and dated by licensed engineer responsible for the inspection of the construction of the New S3 attesting Substantial Completion; and 3. Provide a list and schedule of all pending construction activities necessary for the completion of the construction of the New S3.
7	Construction Completion, Startup, and Debugging	Within seven hundred twenty (720) Days from EPA's written notification of its approval of the Conceptual Design Report May 22, 2017	<ol style="list-style-type: none"> 1. Complete construction; 2. Provide certification signed and dated by licensed engineer responsible for the inspection of the construction of the New S3 that all the equipment and components of the New S3 are functioning properly and in accordance with manufacturers specifications; 3. Complete and submit certification that final stabilization was provided (<i>e.g.</i>, crushed stone, pavement) to all areas in which soil were exposed and all post-construction controls measures (<i>e.g.</i> Structural BMPs) were implemented according to applicable permits and the revised SWPPP; and 4. Submit to the federal, state, and municipal entities notification of construction completion and request for termination of the environmental permit required for the project.

Number	Milestone	Deadline	Milestone Description and Required Actions
8	Final Completion Report	July 21, 2017	<p>Submit Final Completion Report concerning the construction of the New S3. The Report shall include but not be limited to:</p> <ol style="list-style-type: none"> 1. key dates and summary of the activities during startup and debugging; 2. a copy of the As-Built S3 drawings and specifications; 3. a copy of the operation and maintenance manual (“O&M Manual”) for the New S3; 4. operational cost for the New S3 (annual basis for next five years); and 5. a detailed cost report detailing all expenses incurred in all engineering services during construction activities, construction of the New S3, construction inspection services, and startup and debugging of the New S3.

APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT
EXPANSION TO CONDADO LAGOON CORAL TRAIL AND REEF ENHANCEMENT
PROJECT

SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

TPPRC will expand the "Condado Lagoon Taíno Coral Trail and Reef Enhancement Project" built in the northeastern extent of the Condado Lagoon ("Project"). The proposed Project area is depicted in **Figure 1**.

The Project is a successful habitat restoration project originally designed and implemented to restore and enhance portions of the San Juan Bay and provide ecological compensation for lost resources affected by the Morris J. Berman Barge oil spill. The Morris J. Berman Barge oil spill occurred in January of 1994, when the Barge ran aground on the reef approximately one hundred meters off the beach at Punta Escambrón, near the entrance to the Condado Lagoon, and spilled approximately 800,000 gallons of No. 6 fuel oil into the coastal waters. In response to the damage, the Corporation for the Conservation of the San Juan Bay Estuary and San Juan Bay Estuary Partnership engaged the services of "HJR Reefscaping" ("Contractor") to design, construct and deploy approximately forty-four (44) artificial reef modules, which now make up the Condado Lagoon Taíno Coral Trail and Reef Enhancement Project. The area where the artificial reefs modules were installed is considered of public domain and is owned by the Puerto Rico Department of Natural and Environmental Resources and the Puerto Rico National Parks Corporation. The second phase of the Condado Lagoon Taíno Coral Trail and Reef Enhancement Project was implemented by International Hospitality Associates, S. en C. por A. (S.E.) ("IHA") in 2010, when thirty (30) additional artificial reef were installed.

The SEP, which is in partial settlement of the alleged stormwater violations, will enhance the ecosystem in the Condado Lagoon and adjacent coastal habitats. To accomplish this goal, TPPRC proposes to engage the services of the Contractor, an entity that is intimately familiar with the Project, as it handled the original SEP from the oil spill and the second phase completed by IHA, to design and build the additional reef modules, secure the necessary permits, and deploy these

artificial reef modules within the Condado Lagoon. The dimensions of the proposed individual artificial reef modules are provided in **Figure 2**. The locations proposed by the Contractor for the deployment of the additional artificial reef modules is provided in **Figure 3**.

The SEP, which is the third and final phase of the Project, is an environmentally beneficial project that will provide a permanent ecological service by helping to restore the coastal habitat and enhance the wildlife and fisheries values of the Condado Lagoon. This is further validated by the report prepared by the Contractor for the San Juan Bay Estuary Program, entitled “Condado Lagoon Taíno Reef Trail Fish Monitoring” (July 2010), which discusses and elaborates on the beneficial effect the Project is having on the Condado Lagoon environment. In summary, the Contractor concluded that the number of species has increased due to the artificial reef modules. The number of fish that were present before deployment increased by 1.5 to 2.4 times in response to the deployment of the artificial reef modules. In addition to fish, other species have recruited to the modules directly, resulting in the colonization of various invertebrate species. Further, the artificial reef modules have increased and diversified the tourist and recreational potential of the area and provided an opportunity for environmental education within the San Juan Bay Estuary.

Because the artificial reef modules will promote the establishment of fish and coral species in the Condado Lagoon, which is hydraulically connected to the San Juan Bay, the body of water allegedly impacted by the stormwater discharges from TPPRC’s Facility, the planned SEP reduces the adverse impact to the environment to which the alleged violation at issue contributes. The planned expansion of the Project will also benefit the public and environment at large because it will be in a widely accessible near-shore area that will provide residents and visitors a unique opportunity to view and gain an understanding of some of the sensitive and valuable shallow water marine habitats, and will become an integral component of an innovative activity that provides reef education and alternative aquatic recreation for visitors of the public beach.

REQUIREMENTS OF THE SEP

- *Construction of the Taíno Reefs* – At least a total of thirty (30) units of the artificial reef modules or Taíno Reefs will be constructed (Fig. 2) using molds designed by the Contractor. The

Taíno Reef structures will be composed of a mixture of cement, gravel and water to specifications. Their approximate dimensions and composition are specified in in Figure 2.

- *Transportation* – Once the structures are built and cured, they will be transported to the unloading destination in the Condado Lagoon area. Upon arrival to the designated unloading area, the Taíno Reefs will be placed in the water utilizing a boom truck. Once in the water, the Taíno Reef is buoyed with two lift bags and transported with a jet ski to the final designated area. The lift bags are placed directly above the selected site and the Taíno Reef is slowly placed in its location as recommended by the Contractor (Fig. 3).
- *Reports* – A SEP report, which will include the exact location of all the structures, will be delivered at the end of the Project.

SEP COST AND IMPLEMENTATION SCHEDULE

The estimated cost of the SEP is \$40,000. This estimate includes costs associated with constructing, transporting, and deploying thirty (30) artificial reef units to the proposed locations. This estimate also includes the costs associated with obtaining any necessary permits and preparing a final report summarizing and certifying installation of the artificial reef modules, as proposed. Defendant estimates that construction, transportation, deployment, and preparation of the final report should take approximately one year.

Figure 1: Proposed SEP Location

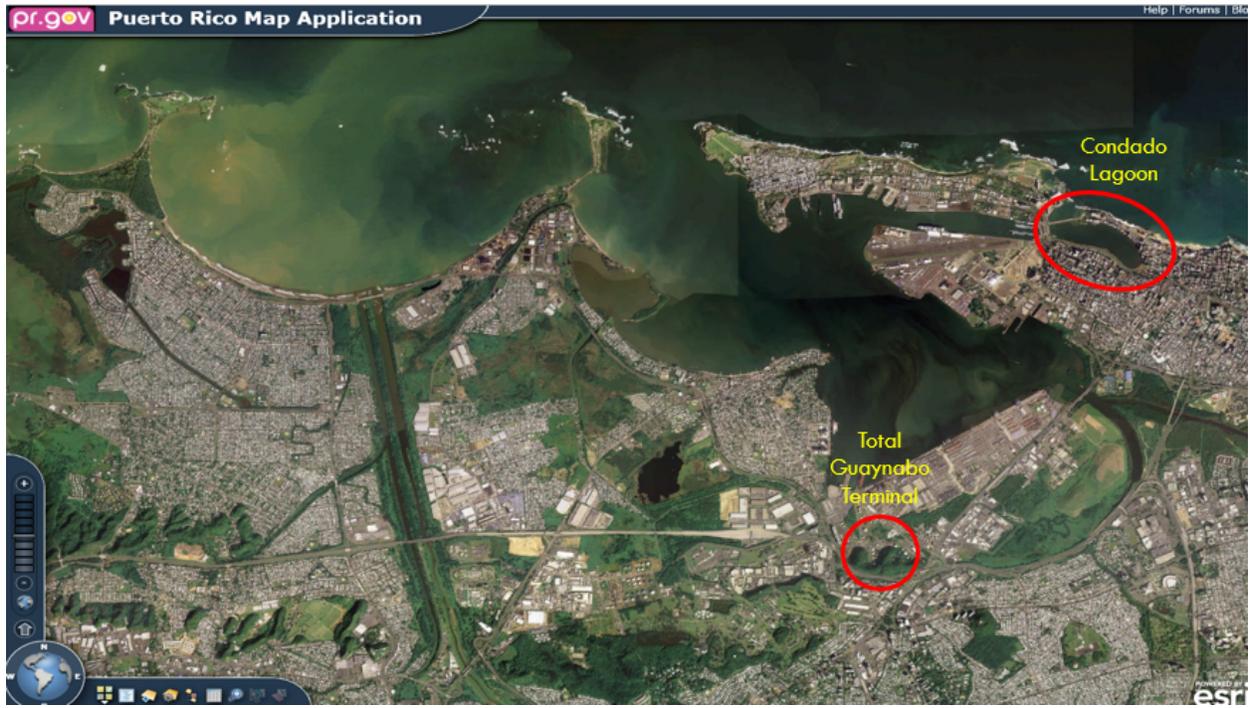
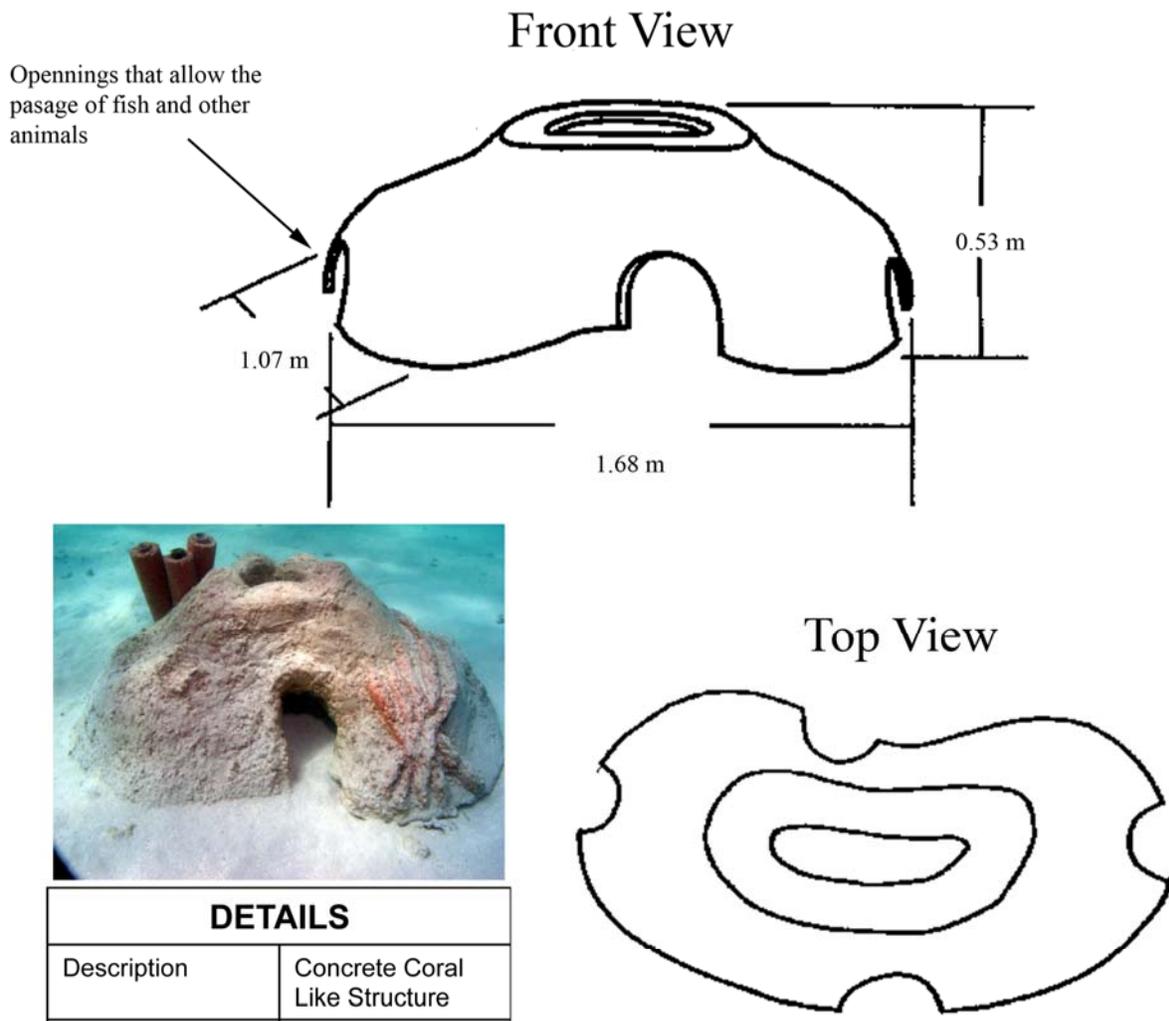


Figure 2: Dimensions of the Proposed Artificial Reef Modules



DETAILS	
Description	Concrete Coral Like Structure
Area Square	1.79 m ² (2.14 ft ²)
Concrete Volume	0.25 m ³ (0.33 yd ³)
Thickness	7.62-12.7 cm (3-5 inches)
Weight	800 pounds

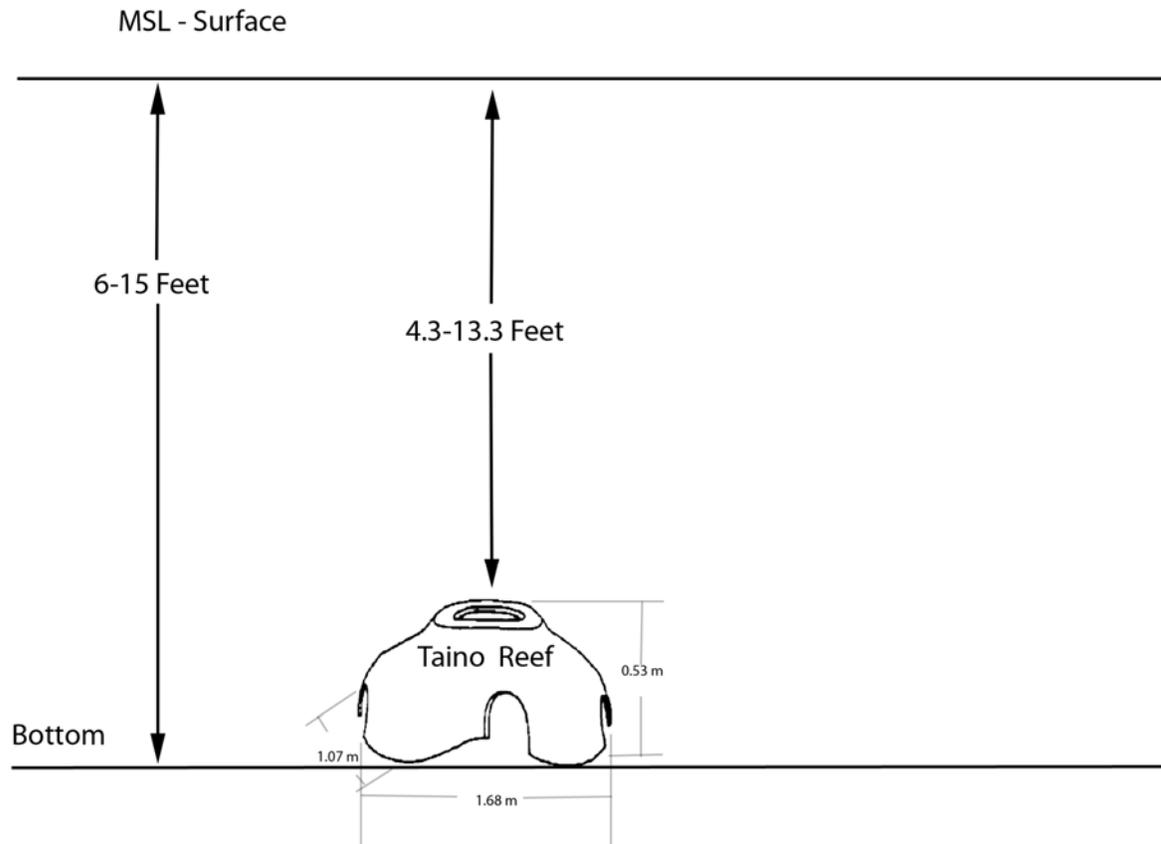


Figure 3: Expected Placement of Artificial Reef Modules

