

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

PBF Logistics Products Terminals LLC	:	Industrial Waste
City of Philadelphia	:	Violation of the Clean Streams Law
Philadelphia County		

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty (“CACP”) is entered into this 13th day of April 2022, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), and PBF Logistics Products Terminals LLC (“PLPT”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 et seq., and the rules and regulations promulgated thereunder.

B. PLPT is a Delaware limited liability company doing business in the Commonwealth of Pennsylvania with a mailing address of 1 Sylvan Way, Second Floor, Parsippany, NJ 07054. The PLPT Terminal maintains a business address of 6850 Essington Avenue, Philadelphia, PA 19153.

C. PLPT owns and operates a petroleum terminal located at 6850 Essington Avenue, Philadelphia, PA 19153, on the west bank of the Schuylkill River (“Facility”). The Facility stores and transfers fuels, including #6 Fuel Oil, #2 Fuel Oil (heating oil), as well as other types of diesel fuels, gasoline, and ethanol. The Facility also conducts transfers of asphalt from heated storage tanks on-site. The Facility is served by pipeline-in and barge-in product delivery to on-site storage tanks, from which product is transferred to tanker trucks for further distribution.

D. PLPT owns and maintains the Facility’s stormwater collection system. On May 31, 2016, the Department issued National Pollutant Discharge Elimination System Permit No. PA011088 Amendment 1 (the “Permit”). The Permit became effective on June 1, 2016 and remained in effect from that date until the Department-issued renewal of the Permit became effective on March 1, 2021.

E. Beginning in October 2018, DEP began receiving reports of an unknown sheen on the section of the Schuylkill River fronting the Facility.

F. On January 10, 2019, the Department conducted an inspection of the Facility. At that time, the Department observed a black petroleum substance on the water at a point along the Facility's bulkhead structure near Facility Tank 6073 and identified this location as the apparent point of discharge. It was confirmed that the black petroleum substance was emerging from beneath the bulkhead, although the source of the discharge was unknown at that time. During a follow-up inspection on January 11, 2019, the Department located another discharge point behind the Facility's bulkhead structure slightly downriver from the first, but the source of the discharge remained unknown. The black petroleum substance continued to discharge from both points until the source was located, repairs were made, and remediation was undertaken. On March 20, 2019, the Department performed another follow-up inspection of the Facility and observed a seep of a black petroleum substance discharging from the bank of and into a man-made ditch adjacent to the Facility's property boundary, and which backflows into the Schuylkill river with falling tides. It was later confirmed that the oil observed in the ditch was connected to the January discharge.

On January 16, 2019, it was determined that a pinhole leak in a section of buried pipe at the Facility had been slowly leaking petroleum products into the soil since before PLPT acquired the Facility, and that the petroleum products eventually migrated in combination with legacy hydrocarbons on the shallow water table to the discharge points beneath the bulkhead structure and, later, at the ditch. This black petroleum substance, later characterized as a mixture of weathered fuel and gasoline product, discharged into the Schuylkill River, a water of the Commonwealth, where it produced a petroleum sheen on the surface of the water. Discharges occurred within the period from January 10, 2019 to April 4, 2019. Product was detected in the Schuylkill River continuously from January 10, 2019 through to January 15, 2019, as well as during follow-up inspections on the following dates: January 28, 2019, March 20, 2019, March 26, 2019, March 29, 2019, and April 4, 2019. During the April 4, 2019 inspection, it was noted that the recovery efforts had significantly reduced the flow rate of the seep which was still occurring. On January 10, 2019 PLPT had installed containment booms to isolate the area around the bulkhead. On March 20, 2022 PLPT had installed containment booms to isolate the area in the ditch.

G. Part C.IV.C.2. of the Permit states that “[s]olids build-up in the [Oil Water Separator (“OWS”)] shall be measured after each precipitation event.”

H. Part A.III.A.3. of the Permit states that “[f]or each measurement...taken pursuant to the requirements of this permit, the permittee shall record the...information” listed in subparagraphs a. through f.

I. On January 10, 2019, the Department conducted an incident investigation and Compliance Evaluation Inspection (“CEI”), which noted the following alleged violations of the Permit: Improper maintenance and operation of the OWS associated with Outfall 002 and inadequate recordkeeping associated with monitoring of the OWS as required by the terms and conditions of the Permit.

J. Part A Section I of the Permit identifies Effluent Limitations, Monitoring, Recordkeeping and Reporting Requirements for each outfall.

K. Part A.III.B.4. of the Permit identifies requirements for submission of Discharge Monitoring Reports (“DMRs”) by PLPT to the Department. According to that section of the Permit, DMRs must be completed in accordance with the Department’s published DMR instructions (3800-FM-BPNPSM0463). DMRs must be received by the Department no later than 28 days following the end of the monitoring period. DMRs are based on calendar reporting periods and Quarterly DMRs must be received by the Department within 28 days following the end of each calendar quarter, i.e., January 28, April 28, July 28, and October 28.

L. On November 22, 2021, the Department conducted an administrative file review of the DMRs submitted from November 2016 through November 2021, which revealed four alleged violations of the effluent limitations set forth in Part A of the Permit, as detailed in Attachment A to this CACP. The administrative file review also revealed that two DMRs, for the calendar quarters of January 1, 2018-March 31, 2018, and April 1, 2019-June 30, 2019, respectively, were submitted late.

M. Section 301 of the Clean Streams Law, 35 P.S. § 691.301, provides that “[n]o person or municipality shall place or permit to be placed, or discharged or permit to flow, or continue to discharge or permit to flow, into any waters of the Commonwealth any industrial wastes, except as hereinafter provided in this act.”

N. Section 307(c) of the Clean Streams Law, 35 P.S. § 691.307(c), states “A discharge of industrial wastes without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department is hereby declared to be a nuisance.”

O. Article I, Section 1 of the Clean Streams Law, 35 P.S. § 691.1, defines “[i]ndustrial waste” in relevant part as “any liquid ... or other substance, not sewage, resulting from any manufacturing or industry, ... [and] shall include all such substances whether or not generally characterized as waste.”

P. The discharge of industrial waste into the Schuylkill River, as described in paragraph F herein, was not authorized by permit or regulation and constitutes a violation of Sections 301 and 307(c) of the Clean Streams Law, 35 P.S. §§ 691.301, 691.307(c).

Q. Section 402(b) of the Clean Streams Law 35 P.S. § 691.402(b), states “Whenever a permit is required by rules and regulations issued pursuant to this section, it shall be unlawful for a person or municipality to conduct the activity regulated except pursuant to a permit issued by the department. Conducting such activity without a permit, or contrary to the terms or conditions of a permit or conducting an activity contrary to the rules and regulations of the department or conducting an activity contrary to an order issued by the department, is hereby declared to be a nuisance.”

R. PLPT’s failure to maintain and operate the OWS, as required by the Permit Part C.IV.C. and described in Paragraph I herein, constitutes a violation of the Permit and of Section 402(b) of the Clean Streams Law, 35 P.S. § 691.402(b).

S. PLPT’s failure to properly document the measurements used to monitor the proper operation of the OWS in accordance with the terms or conditions of the Permit Part A.III.A.3, and

described in paragraph I herein, constitutes a violation of Section 402(b) of the Clean Streams Law, 35 P.S. § 691.402(b)

T. The effluent limitation exceedances described in paragraph L herein and detailed in Attachment A to the CACP constitute violations of the Clean Streams Law, 35 P.S. §§ 691.301, 691.307(c), and 691.402(b).

U. PLPT's failure to submit DMRs in accordance with the schedule identified by the Permit, as described in Paragraph L herein, constitutes a violation of Part A.III.B.4. of the Permit and Section 402(b) of the Clean Streams Law, 35 P.S. § 691.402(b).

V. Section 91.33(a) of the Department's rules and regulations, 25 Pa. Code § 91.33(a), states that "it is the responsibility of the person or municipality at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify downstream users of the waters."

W. PLPT's failure to immediately report the release, which DEP confirmed during its inspection on January 10, 2019, as described in paragraphs E and F, constitutes a violation of 25 Pa. Code § 91.33(a).

X. Section 91.33(b) of the Department's rules and regulations, 25 Pa. Code § 91.33(b), states, "In addition to the notices in subsection (a)...within 15 days from the incident, [a person] shall remove from the ground and from the affected waters of this Commonwealth to the extent required by this title the residual substances contained thereon or therein."

Y. PLPT's failure to clean up the pollution within 15 days, as described in paragraphs E and F herein, constitutes a violation of 25 Pa. Code § 91.33(b).

Z. Section 91.34(a) of the Department's rules and regulations, 25 Pa. Code § 91.34(a), states, "[p]ersons engaged in an activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants shall take necessary measures to prevent the substances from directly or indirectly reaching waters of this Commonwealth, through accident, carelessness, maliciousness, hazards of weather or from another cause."

AA. PLPT's failure to take necessary measures to prevent substances from reaching waters of the Commonwealth while engaged in the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants, as described in paragraphs C, E, F, I, and L, constitutes a violation of 25 Pa. Code § 91.34(a).

BB. The violations described in paragraphs P, R, S, U, W, Y, and AA, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; and subject PLPT to a claim for civil penalties under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

After full and complete negotiation of all matters set forth in this CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby **ASSESSED** by the Department and **AGREED** to by PLPT as follows:

1. **Assessment.** In resolution of the Department's claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Clean Streams Law, 35 P.S. § 691.605, the Department hereby, assesses a civil penalty of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000)**, which PLPT hereby agrees to pay.

2. **Civil Penalty Settlement.** Within (10) business days of execution of this CACP, PLPT shall pay the civil penalty assessed in paragraph 1. This payment is in settlement of the Department's claim for civil penalties for all environmental damage caused by the release of a regulated petroleum substance, or otherwise relating to the leak from certain piping at the Facility as specified in the Consent Order and Agreement entered into by the Department and PLPT dated December 15, 2021 and as described herein, including without limitation, the violations set forth in paragraphs P, R, S, U, W, Y, and AA, above, for the dates set forth in paragraphs E, F, I, K, and L, above. The payment of **(\$250,000)** shall be by corporate check or the like, made payable to "The Commonwealth of Pennsylvania Clean Water Fund" and sent to the attention of:

Mr. Steve Flannery
PA Department of Environmental Protection
2 East Main Street
Norristown, PA 19401.

3. **Findings.**

(a) PLPT agrees that the findings in paragraphs A through O, Q, V, X, and Z, are true and correct and, in any matter or proceeding involving PLPT and the Department, PLPT shall not challenge the accuracy or validity of these findings.

(b) The parties do not authorize any other persons to use the findings in this CACP in any matter or proceeding.


4. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. PLPT reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this CACP.


IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of PLPT certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of PLPT; that PLPT consents to the entry of this CACP as an **ASSESSMENT** of the Department; that PLPT hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that PLPT

knowingly waives its right to appeal this CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. (Signature by PLPT's attorney certifies only that the agreement has been signed after consulting with counsel.)

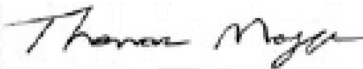
FOR PBF LOGISTICS PRODUCTS
TERMINALS LLC:

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

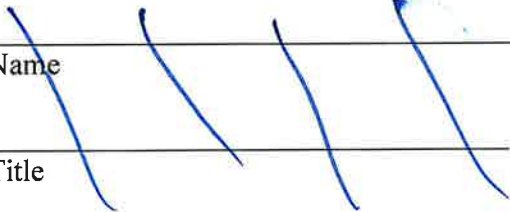


Name


Title




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Regional Manager
Clean Water




Name

Title



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Office of Chief Counsel



Name Katherine L. Vaccaro
Attorney for PLPT

MONITORING END DATE	REPORT FREQUENCY	OUTFALL NUMBER	NON- COMPLIANCE TYPE	PARAMETER	SAMPLE VALUE	PERMIT VALUE	UNIT OF MEASURE	STATISTICAL BASE CODE
12/31/2017	Quarterly	1	Violation of permit condition	Oil and Grease	18.8	15	mg/L	Average Quarterly
12/31/2017	Quarterly	1	Violation of permit condition	Oil and Grease	37.6	30	mg/L	Instantaneous Maximum
12/31/2017	Quarterly	2	Violation of permit condition	Oil and Grease	28.25	15	mg/L	Average Quarterly
12/31/2017	Quarterly	2	Violation of permit condition	Oil and Grease	52.1	30	mg/L	Instantaneous Maximum
3/31/2018	Quarterly		Late DMR Submission					
6/30/2019	Quarterly		Late DMR Submission					