

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

IN THE MATTER OF:)
) COMPLAINTANT'S INITIAL
) PREHEARING EXCHANGE
)
 BASF Catalysts, LLC) EPCRA-04-2009-2001
)
)
 Respondent.)
)

2009/02/27 11:11:04
OFFICE OF THE CLERK

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Complainant's Initial Prehearing Exchange is being submitted pursuant to Administrative Law Judge William B. Moran's Prehearing Order dated February 2, 2009, and Section 22.19(a) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Rules of Practice"). For ease of review, this response is divided in a manner which responds to the style of the Prehearing Order.

1. **Complainant submits the following:**

(A) A list of all expert and other witnesses Complainant intends to call, with narrative summary of their expected testimony, and resume for each expert witness.

Complainant anticipates that it may call the following witness:

Erika White (formerly Erika Bolden)
Environmental Engineer
Air Enforcement Section
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303

Mrs. White is expected to testify as to her duties as an Environmental Engineer in EPA's Air Enforcement Section. Mrs. White conducted the inspection of Respondent's facility on April 10, 2007, and is expected to testify about observations she made and information she gathered during this inspection, as documented in EPA's corresponding EPCRA Inspection Report for the April 10, 2007, Inspection. In addition, Mrs. White is expected to testify to the calculation of EPA's proposed penalty in this matter and provide the basis for concluding that the penalty proposed in the Complaint is the appropriate penalty for these violations.

Complainant respectfully reserves the right to call or not call the aforementioned potential witness, and to expand or otherwise modify the scope, extent, or areas of the testimony of the above mentioned witness, where appropriate. In addition, Complainant respectfully reserves the right to call additional witnesses to address issues or materials which may be raised or placed by Respondent in its prehearing exchange. Complainant also respectfully reserves the right to supplement its witness list and to call additional witnesses on its behalf upon adequate notice to Respondent and to the Court.

(B) Copies of all documents and exhibits intended to be introduced into evidence.

In addition to the Complaint and Respondent's Answer (copies of which have previously been filed with the Court and which all parties presently possess), incorporated herein by reference, EPA intends to offer into evidence the following documents, copies of which are marked for identification and attached.

1. Complainant's Exhibit 1. EPA's "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [Amended]," dated April 12, 2001, and amended June 5, 2006.
2. Complainant's Exhibit 2. EPCRA § 313 penalty calculation prepared by Mrs. White.
3. Complainant's Exhibit 3. "EPA Region 4 EPCRA Inspection Report" including BASF Catalysts' Savannah facility process description sheet marked for identification as "Document 1."
4. Complainant's Exhibit 4. Mrs. White's April 10, 2007, field notebook entry entitled "BASF Catalysts."
5. Complainant's Exhibit 5. "Enforcement Case Report" obtained from EPA's Enforcement & Compliance History Online (ECHO) database prior to issuance of Complainant regarding Respondent's EPCRA § 313 compliance history.
6. Complainant's Exhibit 6. Complainant's EPCRA Penalty Calculation Narrative.

Complainant anticipates the possibility that Complainant may need to introduce further evidence in response to issues which may be raised in Respondent's prehearing exchange. Complainant therefore respectfully reserves the right to supplement its exhibit list upon adequate notice to Respondent and to this Court. In addition, Complainant may request this Court to take official notice of appropriate matters in accordance with 40 C.F.R. § 22.22(f).

In the event EPA's continuing review of Respondent's documents, in preparation for this case, reveals additional violations, Complainant respectfully reserves the right, upon adequate notice to Respondent and this Court, to move for Amendment of the Complaint and for: (1) presentation of additional testimony substantiating such additional violations; and (2) introduction of additional documentary evidence substantiating such additional violations.

2. Complainant's statement explaining in detail how the proposed penalty amount was determined, including a description of how the specific provisions of any EPA penalty or enforcement policies or guidelines were applied in calculating the penalty.

The proposed penalty was calculated in accordance with the guidelines of the EPCRA § 313 Penalty Policy and the penalty criteria of Section 16 of the Toxic Substances Control Act, 15 U.S.C. § 2615(B). The EPCRA § 313 Penalty Policy is found herein as Complainant's Exhibit 1. Complainant's statement explaining how the proposed penalty amount was determined is attached hereto as Complainant's Exhibit 6.

3. Complainant's statement on the applicability of the Paperwork Reduction Act, 44 U.S.C. § 3501 *et. seq.*, to this proceeding, including whether there is a current Office of Management and Budget Control number involved and whether the provisions of Section 3512 of the PRA may apply to this case.

The Paperwork Reduction Act ("PRA"), 44 U.S.C. § 3501 *et. seq.*, applies in part to this proceeding. To the extent the PRA is applicable to the information collection requirements required by 40 C.F.R. part 372, which implements Section 313 of EPCRA, the Office of Management and Budget ("OMB") has approved such information collection requirements under the provisions of the PRA and has assigned the Information Collection Request ("ICR") OMB control numbers 2070-0093 (EPA ICR No. 1363-15) for Form R, and 2070-0143 (EPA ICR No. 1704-09) for Form A. *See* 69 Fed. Reg. 7628 (February 18, 2004); 71 Fed. Reg. 13590 (March 16, 2006). Thus, the PRA does not bar enforcement of the regulatory violations of EPCRA alleged in the Complaint nor the imposition of penalties therefore.

To the extent that information gathered through Form R and Form A submissions is expressly required under EPCRA § 313, such information is not subject to the PRA. *See, e.g., Gossner Foods v. Environmental Protection Agency*, 918 F. Supp. 359 (D.Utah 1996). Section 3512 of the PRA does not operate to preclude penalties when a reporting obligation is required by statute rather by regulation. *See Gossner Foods*, 918 F. Supp at 365-66 (directly on point as it relates to the PRA applicability of EPCRA § 313 reporting requirements).

4. Complainant's statement on its views regarding the place for the hearing, pursuant to §§ 22.21(d) and 22.19(d) of the Rules of Practice, Complainant's availability for the hearing, and estimate of the time needed to present Complainant's direct case.

Pursuant to 40 C.F.R. §§ 22.21(d) and 22.19(d), the hearing should be held in the county where the Respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, D.C.

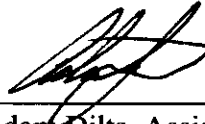
Complainant respectfully requests that the hearing in this matter be held in Atlanta, Georgia within the vicinity of Complainant's offices, located at 61 Forsyth Street. Complainant's witness works and is available in Atlanta.

Complainant expects that it will need one-half day to present its case assuming Respondent has admitted liability and is only contesting Complainant's proposed penalty. Complainant respectfully reserves the right to revise this estimated timeframe should Respondent clarify that it is also contesting liability for the alleged violations.

EPA staff are generally available for the hearing. At present, Complainant's witness or EPA counsel will be unavailable prior to May 26, 2009, and for the week of August 4, 2009.

Dated: March 27, 2009

Respectfully Submitted,



Adam Dilts, Assistant Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Tel (404) 562-9581/Fax (404) 562-9486

CERTIFICATE OF SERVICE

I certify that, on the date indicated below, I hand-delivered the original and one copy of Complainant's Prehearing Exchange, with attachments, In the Matter of BASF Catalysts, LLC, Docket No. EPCRA-04-2009-2001, to the Regional Hearing Clerk at the following address:

Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA – Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

I also certify that, on the date indicated below, I sent by Certified Mail, return receipt requested, a copy of the Complainant's Prehearing Exchange, with attachments, to the following addressees:

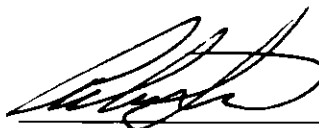
Judge William B. Moran
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20005

and

Nancy Lake Martin
BASF Catalysts, LLC
100 Campus Park Drive
Florham Park, New Jersey 07932

03/27/09

Date



Adam Dilts, Assistant Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

**ENFORCEMENT RESPONSE POLICY FOR SECTION 313 OF
THE EMERGENCY PLANNING COMMUNITY RIGHT-TO-KNOW ACT (1986)
AND
SECTION 6607 OF THE POLLUTION PREVENTION ACT (1990)
[AMENDED]**

Amended 1996, 1997, and 2001

April 12, 2001

**ENFORCEMENT RESPONSE POLICY
FOR SECTION 313 OF THE
EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (1986)
And
SECTION 6607 OF THE
THE POLLUTION PREVENTION ACT (1990)**

**Issued by the
Office of Compliance Monitoring
of the
Office of Prevention, Pesticides and Toxic Substances**

United States Environmental Protection Agency

August 10, 1992

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INTRODUCTION

On December 2, 1988, the U.S. Environmental Protection Agency (EPA) issued an Enforcement Response Policy for addressing violations of Section 313 of the Emergency Planning and Community Right-to-Know Act. Since that time, EPA has identified opportunities for refining and adding clarity to that policy. This revised enforcement response policy incorporates three years of enforcement experience with Section 313 of the Emergency Planning and Community Right-to-Know Act.

This policy is immediately applicable and will be used to calculate penalties for all administrative actions concerning EPCRA Section 313 issued after the date of this policy, regardless of the date of the violation.

The Emergency Planning and Community Right-to-Know Act, (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986, contains provisions for reporting both accidental and nonaccidental releases of certain toxic chemicals. Section 313 (§313) of EPCRA requires certain manufacturers, processors, and users of over 300 designated toxic chemicals to report annually on emissions of those chemicals to the air, water and land. The Pollution Prevention Act (PPA) of 1990 requires additional data and information to be included annually on Form R reports beginning in the 1991 reporting year, for reports which are due on July 1, 1992. These reports must be sent to the U.S. Environmental Protection Agency (EPA) and to designated state agencies. The first reporting year was 1987, and reports were due by July 1, 1988, and annually by July 1 thereafter. The U.S. EPA is responsible for carrying out and enforcing the requirements of §313 of EPCRA and the PPA and any rules promulgated pursuant to EPCRA and the PPA.

Section 325(c) of the law authorizes the Administrator of the EPA to assess civil administrative penalties for violations of §313. Any person (owner or operator of a facility, other than a government entity) who violates any requirement of §313 is liable for a civil administrative penalty in an amount not to exceed \$25,000 for each violation. Each day a violation continues may constitute a separate violation. The Administrator may assess the civil penalty by administrative order or may bring an action to assess and collect the penalty in the U.S. District Court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

The purpose of this Enforcement Response Policy is to ensure that enforcement actions for violations of EPCRA §313 and the PPA are arrived at in a fair, uniform and consistent manner; that the enforcement response is appropriate for the violation committed; and that persons will be deterred from committing EPCRA §313 violations and the PPA.

For purposes of this document, "EPCRA," "§313" and EPCRA "EPCRA §313" should be understood to include the requirements of the Pollution Prevention Act.

LEVELS OF ACTION

Enforcement alternatives include: (a) no action; (b) notices of noncompliance; (c) civil administrative penalties (d) civil judicial referrals, and (e) criminal action under 18 U.S. Code 1001.

EPA reserves the right to issue a Civil Administrative Penalty for any violation not specifically identified under the Notice of Noncompliance or Administrative Civil Penalty section.

NO ACTION

Revisions to Form R reports

Generally, an enforcement action will not be taken regarding voluntary changes to correctly reported data in Form R reports. Changes to Form R reports are: revisions to original reports which reflect only improved or new information and/or improved or new procedures which were not available when the facility was completing its original submission. Facilities submitting revisions should maintain records to document that the information used to calculate the revised estimate is new and was not available at the time the first estimate was made. A facility which submits a revision to a Form R report which does not meet this description of a change or otherwise calls into question the basis for the initial data reported on the original Form R report will be subject to an enforcement action.

Discussion

Each Form R report must provide estimated releases: it is not acceptable to submit Form R reports with no estimate(s) of releases. Such reports will be considered incomplete reports and subject to an enforcement action as described below. An estimate of "zero" is acceptable if "zero" is a reasonable estimate of a facility's releases based on readily available information, i.e., monitoring data or emission estimates.

Every Form R report submitted after July 1 for a chemical not previously submitted is not a revision, but a failure to report in a timely manner.

Facilities considering whether to submit a revision should refer to the September 26, 1991 Federal Register policy notice which explains for what circumstances a facility should submit a revision and the correct format for submitting a revision. Additionally, the notice explains the purpose of EPA's policy of delaying data entry of all revisions received after November 30th of the year the original report was due until after the Toxic Release Inventory (TRI) database can be made available to the public. Revisions submitted after November 30th will be processed and made available to the public in updated versions of the TRI database. The EPA cannot accept and process revisions to the TRI database on a continuing basis without significantly delaying the public availability of the data. Following the September 26, 1991 Federal Register policy notice, this ERP adopts the November 30th date to determine the gravity of voluntarily disclosed data quality violations.

NOTICES OF NONCOMPLIANCE (NON)

Summary of Circumstances Generally Warranting an NON

- o Form R reports which are incorrectly assembled; for example, failure to include all pages for each Form R or reporting more than one chemical per Form R.
- o Form R reports which contain missing or invalid facility or chemical identification information; for example, the CAS number reported does not match the chemical name reported.
- o Submission of §313 and Pollution Prevention Act data on an invalid form.
- o Incomplete Reporting, i.e., reports which contain blanks where an answer is required.
- o Magnetic media submissions which cannot be processed.
- o The submission of a Form R report with trade secrets without a sanitized version, or the submission of the sanitized version of the Form R report without the trade secret information.
- o Form R reports which are sent to an incorrect address.

NOTE: An incorrect address is any address other than that of the U.S. EPA Administrator's office, or other than the address listed in the §313 regulation or on the Form R. Form R reports not received by EPA due to an incorrect address and/or packaging are not the

responsibility of EPA and are subject to a civil administrative penalty for "failure to report in a timely manner" violation.

NOTE: The Agency reserves the right to assess a Civil Administrative Complaint for certain data quality errors; see page five for a definition of these types of errors. Generally, these are errors which cannot be detected during the data entry process.

Discussion

A Notice of Noncompliance (NON) is the appropriate response for certain errors on Form R reports detected by the Agency. Generally, these are errors which prevent the information on the Form R from being entered into EPA's database. The NON will state that corrections must be made within a specified time (30 days from receipt of the NON). Failure to correct any error for which a NON is issued may be the basis for issuance of a Civil Administrative Complaint.

The decision to issue NONs for the submission of a Form R report with a trade secret claim without a sanitized version, or of the sanitized version without the trade secret information, is being treated the same as a Form R report with errors. This is a violation of EPCRA §313 as well as the trade secret requirements of EPCRA.

CIVIL ADMINISTRATIVE COMPLAINTS

A Civil Administrative Complaint will be the appropriate response for: failure to report in a timely manner; data quality errors; failure to respond to a NON; repeated violations; failure to supply notification and incomplete or inaccurate supplier notification; and failure to maintain records and failure to maintain records according to the standard in the regulation.

Definitions:

Failure to Report in a Timely Manner This violation includes the failure to report in a timely manner to either EPA or to the state for each chemical on the list. There are two distinct categories for this violation. A circumstance level one penalty will be assessed against a category I violation. A "per day" formula is used to determine category II penalties; see this per day formula on page 13.

- o **Category I:** Form R reports that are submitted one year or more after the July 1 due date.
- o **Category II:** Form R reports that are submitted after the July 1 due date but before July 1 of the following year.

EPCRA §313 Subpart (a) requires Form R reports to be submitted annually on or before July 1 and to contain data estimating releases during the preceding calendar year. Facilities which submit Form R reports after the July 1 deadline have failed to comply with this annual reporting requirement and have defeated the purpose of EPCRA §313, which is to make this toxic release data available to states and the public annually and in a timely manner.

Data Quality Errors: Data Quality Errors are errors which cause erroneous data to be submitted to EPA and states. Generally, these are errors which are not readily detected during EPA's data entry process.¹ Below are the range of actions which constitute data quality errors; generally, these are a result of a failure to comply with the explicit requirements of EPCRA §313:

- o Failure to calculate or provide reasonable estimates of releases or off-site transfers.
- o Failure to identify all appropriate categories of chemical use, resulting in error(s) in estimates of release or off-site transfers.
- o Failure to identify for each wastestream the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods, for that wastestream.
- o Failure to use all readily available information necessary to calculate as accurately as possible, releases or off-site transfers.
- o Failure to provide the annual quantity of the toxic chemical which entered each environmental medium.
- o Failure to provide the annual quantity of the toxic chemical transferred off-site.
- o Failure to provide information required by §6607 of the Pollution Prevention Act of 1990 and by any regulations promulgated under §6607 of the Pollution Prevention Act of 1990.

¹EPA's program office may issue Notices of Technical Error (NOTEs) for certain data quality errors which are detected during the data entry process.

- o Under the requirements of §6607 of the Pollution Prevention Act of 1990, claiming past or current year source reduction or recycling activities which are not in fact implemented by the facility. This does not apply to activities which the facility may estimate for future years.
- o A facility's Form R reporting demonstrates a pattern of similar errors or omissions as manifested by the issuance by EPA of NONs for two or more reporting years for the same or similar errors or omissions.

NOTE: If an error is made in determining a facility's toxic chemical threshold which results in the facility erroneously concluding that a Form R report for that chemical is not required, this is not a data quality error, but a "failure to report in a timely manner" violation.

Failure to respond to an NON When a facility receives a Notice of Noncompliance (NON) and fails to comply with the Notice of Noncompliance, i.e., fails to correct the information EPA requests to be corrected in the NON by the time period specified in the NON, the violation is "failure to respond to an NON." Included here is the failure to also provide the state with corrected information requested in the NON within 30 days of receiving the NON.

Repeated violation This category of violation only applies to violations which would generally warrant an NON for the first time. A repeated violation is any subsequent violation which is identical or very similar to a prior violation for which an NON was issued. Separate penalty calculation procedures (discussed on page 16 under "history of prior violations") are to be followed for violations which warrant a civil administrative complaint for the first violation and are repeated.

Failure to Supply Notification Under 40 CFR §372.45, certain facilities which sell or otherwise distribute mixtures or trade name products containing §313 chemicals are required to supply notification to (i) facilities described in §372.22, or (ii) to persons who in turn may sell or otherwise distribute such mixtures or products to a facility described in §372.22(b) in accordance with paragraph §372.45(b). Failure to comply with 40 CFR §372.45, in whole or in part, constitutes a violation. A violation will be "failure to supply notification" or "incomplete or inaccurate supplier notification."

Failure to Maintain Records Under 40 CFR §372.10, each person subject to the reporting requirements of 40 CFR §372.30 must retain records documenting and supporting the information submitted on each Form R report. Additionally, under 40 CFR

§372.10, each person subject to the supplier notification requirements of 40 CFR §372.45 must retain certain records documenting and supporting the determination of each required notice under that same section. These records must be kept for three years from the date of the submission of a report under 40 CFR §372.30 or the date of notification under 40 CFR §372.45. The records must be maintained at the facility to which the report applies or at the facility supplying notification. Failure to comply with 40 CFR Part 372.10, in whole or in part, constitutes a violation. Violations will be a "failure to maintain records as prescribed at 40 CFR Part 372.10 (a) or (b)", or a "failure to maintain complete records as prescribed at 40 CFR Part 372.10 (a) or (b)" or "failure to maintain complete records at the facility as prescribed at 40 CFR Part 372.10(c)."

CIVIL JUDICIAL REFERRALS

In exceptional circumstances, EPA, under EPCRA §325(c), may refer civil cases to the United States Department of Justice for assessment and/or collection of the penalty in the appropriate U.S. District Court. U.S. EPA also may include EPCRA counts in civil complaints charging Respondents with violations of other environmental statutes.

CRIMINAL SANCTIONS

EPCRA does not provide for criminal sanctions for violations of §313. However, 18 U.S.C. §1001 makes it a criminal offense to falsify information submitted to the U.S. Government. This would specifically apply to, but not be limited to, EPCRA §313 records maintained by a facility that were intentionally generated with incorrect or misleading information. In addition, the knowing failure to file an EPCRA §313 report may be prosecuted as a concealment prohibited by 18 U.S.C. §1001.

ASSESSING A CIVIL ADMINISTRATIVE PENALTY

SUMMARY OF THE PENALTY POLICY MATRIX

This policy implements a system for determining penalties in civil administrative actions brought pursuant to §313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Penalties are determined in two stages: (1) determination of a "gravity-based penalty," and (2) adjustments to the gravity-based penalty.

To determine the gravity-based penalty, the following factors affecting a violation's gravity are considered:

- o the "circumstances" of the violation
- o the "extent" of the violation

The circumstance levels of the matrix take into account the seriousness of the violation as it relates to the accuracy and availability of the information to the community, to states, and to the federal government. Circumstance levels are described on pages 11-13.

The extent level of a violation is based on the quantity of each EPCRA §313 chemical manufactured, processed, or otherwise used by the facility; the size of the facility based on a combination of the number of employees at the violating facility; and the gross sales of the violating facility's total corporate entity. The Agency will use the number of employees and the gross sales at the time the civil administrative complaint is issued in determining the extent level of a violation.

To determine the gravity-based penalty, determine both the circumstance level and the extent level. These factors are incorporated into a matrix which establishes the appropriate gravity-based penalty amount. The penalty is determined by calculating the penalty for each violation on a per-chemical, per-facility, per-year basis (see special circumstances for per day penalties on page 13).

Once the gravity-based penalty has been determined, upward or downward adjustments to the proposed penalty amount may be made in consideration of the following factors:

- o Voluntary Disclosure
- o History of prior violation(s)
- o Delisted chemicals
- o Attitude
- o Other Factors as Justice May Require
- o Supplemental Environmental Projects
- o Ability to Pay

The first three of these adjustments may be made prior to issuing the civil complaint.

EXTENT LEVELS

In the table below, the total corporate entity refers to all sites taken together owned or controlled by the domestic or foreign parent company. EPA Regions have discretion to use those figures for number of employees and total corporate sales which

are readily available. If no information is available, Regions may assume the higher level and adjust if the facility can produce documentation demonstrating they belong in a lower extent level.

Facilities which manufacture, process or otherwise use ten times or more the threshold of the §313 chemical involved in the violation and meet the total corporate entity sales and number of employees criteria below:

	LEVEL
\$10 million or more in total corporate entity sales and 50 employees or more.	A
\$10 million or more in total corporate entity sales and less than 50 employees.	B
Less than \$10 million in total corporate entity sales and 50 employees or more.	B
Less than \$10 million in total corporate entity sales and less than 50 employees.	B

Facilities which manufacture, process or otherwise use less than ten times the threshold of the §313 chemical involved in the violation and meet the total corporate entity sales and number of employee criteria below:

	LEVEL
\$10 million or more in total corporate entity sales and 50 employees or more.	B
\$10 million or more in total corporate entity sales and less than 50 employees.	C
Less than \$10 million in total corporate entity sales and 50 employees or more.	C
Less than \$10 million in total corporate entity sales and less than 50 employees.	C

Discussion

EPA believes that using the amount of §313 chemical involved in the violation as the primary factor in determining the extent level underscores the overall intent and goal of EPCRA §313 to make available to the public on an annual basis a reasonable estimate of the toxic chemical substances emitted into their communities from these regulated sources. A necessary component

of making useful data available to the public is the supplier notification requirement of §313, as a significant amount of toxic chemicals are distributed in mixtures and trade name products. An additional goal of §313 is to ensure that purchasers of §313 chemicals are informed of their potential §313 reporting requirements. The extent levels underscore this goal as well.

The size of business is used as a second factor in determining the appropriate extent level to reflect the fact that the deterrent effect of a smaller penalty upon a small company is likely to be equal to that of a larger penalty upon a large company. Ten times the threshold for distinguishing between extent levels was chosen because it represents a significant amount of chemical substance. Thus, the two factors, the amount of §313 chemical involved and the size of business, are combined and used to determine the extent level table.

PENALTY MATRIX

PENALTY MATRIX			
	EXTENT LEVELS		
CIRCUMSTANCE LEVELS	A	B	C
1	\$25,000	\$17,000	\$5,000
2	\$20,000	\$13,000	\$3,000
3	\$15,000	\$10,000	\$1,500
4	\$10,000	\$ 6,000	\$1,000
5	\$ 5,000	\$ 3,000	\$ 500
6	\$ 2,000	\$ 1,300	\$ 200

CIRCUMSTANCE LEVELS

A penalty is to be assessed for each §313 chemical for each facility. There are two "per day" penalty assessments; see page 12 and 13 for further clarification.

The date used to determine the circumstance level for "failure to report in a timely manner" is the postmark date of the Form R submission(s).

All violations are "one day" violations unless otherwise noted.

Base Penalty Matrices For Violations Which Occur After January 30, 1997

**EPCRA § 313
GRAVITY BASED PENALTY MATRIX**

CIRCUMSTANCES LEVELS	EXTENT		
	A Major	B Significant	C Minor
1	\$27,500	\$18,700	\$5,500
2	\$22,000	\$14,300	\$3,300
3	\$16,500	\$11,000	\$1,650
4	\$11,000	\$6,600	\$1,100
5	\$5,500	\$3,300	\$550
6	\$2,200	\$1,430	\$220

*Gravity Based Penalty Matrix to supplement the "Final EPCRA §313 Enforcement Response Policy" (8/10/92). Insert behind page 11 of the "Final EPCRA §313 Enforcement Response Policy" (8/10/97).

Gravity-based penalty matrix to supplement **Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-To-Know Act (1989) and Section 6607 of the Pollution Prevention Act (1990), Amended (04/12/01)** for violations that occur on or after March 15, 2004. Insert behind page 11-A.

GRAVITY-BASED PENALTY MATRIX FOR EPCRA SECTION 313

CIRCUMSTANCE LEVEL	EXTENT		
	A Major	B Significant	C Minor
LEVEL 1	\$32,500	\$21,922	\$6,448
LEVEL 2	\$25,791	\$16,764	\$3,869
LEVEL 3	\$19,343	\$12,895	\$1,934
LEVEL 4	\$12,895	\$7,737	\$1,290
LEVEL 5	\$6,448	\$3,869	\$645
LEVEL 6	\$2,579	\$1,676	\$258

Note: After calculating the gravity-based penalty for each count, the total applicable gravity-based penalty for all counts in a particular case/matter should be rounded to the nearest unit of \$100 as required by the memorandum from Thomas Skinner, dated September 21, 2004, implementing the Civil Monetary Penalty Adjustment Rule as published in the Federal Register on February 13, 2004 (69 FR 7121).

LEVEL 1

Failure to report in a timely manner, Category I.

LEVEL 2

Failure to maintain records as prescribed at 40 CFR §372.10(a) or (b).

Failure to supply notification; per chemical, per year.

LEVEL 3

Data Quality Errors.

Repeated NON violations.

LEVEL 4

Failure to report in a timely manner, Category II: Per Day formula applies.

Failure to maintain complete records as prescribed at 40 CFR §372.10(a) or (b).

LEVEL 5

Failure to Respond to an NON.

Data Quality Errors which are voluntarily disclosed after November 30th of the year the original report was due.

Incomplete or inaccurate supplier notification; per chemical, per year.

LEVEL 6

Data Quality Errors which are voluntarily disclosed on or before November 30th of the year the original report was due.

Revisions which are voluntarily submitted to EPA but are not reported to the State within 30 days of the date the revision is submitted to EPA.

Failure to maintain records at the facility (40 CFR §372.10(c)).

MULTIPLE VIOLATIONS

Separate penalties are to be calculated for each chemical for each facility. If a company has three facilities and fails to report before July 1 of the year following the year the report was due, a penalty is to be assessed for each facility and for each chemical. Assuming the annual sales of the corporate entity exceed \$10 million dollars, the facility has more than 50 employees, and each facility exceeds the threshold limits by more than ten times, the penalty would be \$25,000 X 3 or \$75,000. If each facility manufactured two chemicals, again at more than ten times the threshold, the penalty would be \$25,000 X 3 X 2 or \$150,000.

If there is more than one violation for the same facility involving the same chemical, the penalties are cumulative. For example, if a firm reports more than one year after the report was due, and the form also contains errors which the firm refused to correct after receiving an NON, the penalty is \$25,000 plus \$15,000. However, since it is the same form involved, and since the statute imposes a maximum of \$25,000 per violation for each day the violation continues, the penalty which will be assessed should be the one day \$25,000 maximum.

PER DAY PENALTIES

Generally, penalties of up to \$25,000 per day may be assessed if a facility within the corporate entity has received a Civil Administrative Complaint, which has been resolved, for failing to report under §313 for any two previous reporting periods. A Civil Administrative Complaint is resolved by a payment, a Consent Agreement and Final Order, or a Court Order.

Penalties of up to \$25,000 per day may also be used for those facilities which refuse to submit reports or corrected information within thirty days after a Civil Administrative Complaint is resolved. Such refusal may be the basis for issuing a new Civil Administrative Complaint to address the days of continuing noncompliance after the initial Civil Administrative Complaint is resolved. For example, a respondent may respond to a Civil Administrative Complaint by paying the full penalty, yet not correct the violation; in such a situation, a new Civil Administrative Complaint should be issued.

PER DAY FORMULA FOR FAILURE TO REPORT IN A TIMELY MANNER

The following per day penalty calculation formula is to be used only for violations involving failure to report on or before July 1 of the year the report is due and before July 1 of the following year:

Level 4 Penalty +

$$\frac{(\# \text{ of days late} - 1) \times (\text{Level 1} - \text{Level 4 Penalty})}{365}$$

For example, the penalty for a facility which submitted one Form R report on October 11 of the year the report was due, and met the criteria for extent level A, would be calculated as follows:

$$\$10,000 + \frac{(102-1)(\$15,000)}{365} = \$10,000 + \$4151 = \$14,151.$$

CAPS ON PENALTIES

While there is a \$25,000 per day per violation maximum penalty under EPCRA §326, which outlines EPA's enforcement authority for EPCRA §313, there are no caps on the total penalty amount a facility may be liable for under EPCRA §313.

ADJUSTMENT FACTORS

The Agency intends to pursue a policy of strict liability in penalizing a violation, therefore, no reduction is allowed for culpability. Lack of knowledge does not reduce culpability since the Agency has no intention of encouraging ignorance of EPCRA and its requirements and because the statute only requires facilities to report information which is readily available. In fact, if a violation is knowing or willful, the Agency reserves the right to assess per day penalties, or take other enforcement action as appropriate. In some cases, the Agency may determine that the violation should be referred to the Office of Criminal Enforcement.

Voluntary Disclosure

To be eligible for any voluntary disclosure reductions, a facility must: submit a signed and written statement of voluntary disclosure to EPA and submit complete and signed report(s) to their state and EPA's TRI Reporting Center within 30 days, or submit complete and signed Form R report(s) immediately to their state and EPA's TRI Reporting Center as indicated on the Form R. In the case of supplier notification violations, the facility must submit a signed and written statement of voluntary disclosure to EPA.

The Agency will not consider a facility to be eligible for any voluntary disclosure reductions if the company has been notified of a scheduled inspection or the inspection has begun, or the facility has otherwise been contacted by U.S. EPA for the purpose of determining compliance with EPCRA §313.

This enforcement response policy establishes two reductions in penalties for voluntary disclosure of violations; the first reduction is a fixed 25%; the second reduction is capped at 25% and can be applied in full or in part according to the extent to which the facility meets the criteria for the second 25% reduction. All facilities which voluntarily disclose violations of §313 (except those identified below) are eligible for the first fixed 25%. The voluntary disclosure reductions apply to the following violations: failure to report in a timely manner, category I and II; and failure to supply notification.

In order to obtain the second reduction for voluntary disclosure a facility must meet the following criteria and explain and certify in writing how the facility meets these criteria:

- o The violation was immediately disclosed within 30 days of discovery by the facility.
- o The facility has undertaken concrete actions to ensure that the facility will be in compliance with EPCRA §313 in the future. Such steps may include but are not limited to: creating an environmental compliance position and hiring an individual for that position; changing the job description of an existing position to include managing EPCRA compliance requirements; and contracting with an environmental compliance consulting firm.
- o For supplier notification violations, the facility provides complete and accurate supplier notification to each facility or person described in §372.45(a) within 60 days of notifying EPA of the violation.
- o The facility does not have a "history of violation" (see below) for EPCRA §313 for the two reporting years preceding the calendar year in which the violation is disclosed to EPA.

This policy is designed to distinguish between those facilities which make an immediate attempt to comply with §313 as soon as noncompliance with §313 is discovered and those which do not.

This enforcement response policy does not allow for voluntary disclosure adjustments in penalties for the following violations because these violations will, in almost all circumstances, be discovered by EPA: failure to maintain records, failure to maintain records according to the standard in the regulation, failure to submit Form R reports containing error corrections or revisions to the state, and failure to supply

corrections or revisions to the state, and failure to supply notification according to the standard in the regulation. In the rare case that a facility identifies such violations and voluntarily discloses them, EPA Regional offices have discretion to adjust the penalty under the "as justice may require" reduction. Consideration of voluntary disclosure for data quality errors is already structured into the circumstance levels: voluntarily disclosed data quality errors are assessed two and three levels lower than data quality errors which are discovered by EPA. Therefore no further "voluntary" reduction is allowed.

NOTE: Reductions available for attitude and for voluntary disclosure are mutually exclusive, as both recognize the facility's concern with, and actions taken toward, timely compliance. Therefore, a facility cannot qualify for reductions in both of these categories.

History of Prior Violations

The penalty matrix is intended to apply to "first offenders." Where a violator has demonstrated a history of violating any section(s) of EPCRA, the penalty should be adjusted upward according to section (d) below prior to issuing the Administrative Civil Complaint. The need for such an upward adjustment derives from the violator not having been sufficiently motivated to comply by the penalty assessed for the previous violation, either because of certain factors consciously analyzed by the firm, or because of negligence. Another reason for penalizing repeat violators more severely than "first offenders" is the increased enforcement resources that are spent on the same violator.

The Agency's policy is to interpret "prior such violations" as referring to prior violations of any provision of the Emergency Planning and Community Right-to-Know Act (1986). The following rules apply in evaluating history of prior such violations:

(a) In order to constitute a prior violation, the prior violation must have resulted in a final order, either as a result of an uncontested complaint, or as a result of a contested complaint which is finally resolved against the violator, except as discussed below at section (d). A consent agreement and final order/consent order (CAFO/CACO), or receipt of payment in response to an administrative civil complaint, are both considered to be the final resolution of the complaint against the violator. Therefore, either a CAFO/CACO, or receipt of payment made to the U.S. Treasury, can be used as evidence constituting a prior violation, regardless of whether or not a respondent admits to the violation.

(b) To be considered a "prior such violation," the violation must have occurred within five years of the present violation. Generally, the date used for the present violation will be one day after July 1 of the year the Form R report was due for failure to report, data quality errors, recordkeeping violations, and supplier notification violations. For other violations, the date of the present violation will be the date the facility was required to come into compliance; for example, for a "failure to respond" violation, the date of the present violation will be the last day of the 30 day period the facility had to respond to a Notice of Noncompliance. This five-year period begins when the prior violation becomes a final order. Beyond five years, the prior violative conduct becomes too distant to require compounding of the penalty for the present violation.

(c) Generally, companies with multiple establishments are considered as one when determining history. Thus, if a facility is part of a company for which another facility within the company has a "prior such violation," then each facility within the company is considered to have a "prior violation." However, two companies held by the same parent corporation do not necessarily affect each other's history if they are in substantially different lines of business, and they are substantially independent of one another in their management, and in the functioning of their Boards of Directors. In the case of wholly- or partly-owned subsidiaries, the violation history of a parent corporation shall apply to its subsidiaries and that of the subsidiaries to the parent corporation.

(d) For one prior violation, the penalty should be adjusted upward by 25%. If two prior violations have occurred, the penalty should be adjusted upward by 50%. If three or more prior violations have occurred, the penalty should be adjusted upward by 100%.

(e) A "prior violation" refers collectively to all the violations which may have been described in one prior Administrative Civil Complaint or CAFO. Thus, "prior violation" refers to an episode of prior violation, not every violation that may have been contained in the first Civil Administrative Complaint or CAFO/CACO.

Delisted Chemicals

For delisted chemicals, an immediate and fixed reduction of 25% can be justified in all cases according the following policy:

If the Agency has delisted a chemical by a final Federal Register Notice, the Agency may settle cases involving the delisted chemical under terms which provide for a 25% reduction

of the initial penalty calculated for any Section 313 violation involving that chemical. The reduction would only apply to chemicals delisted before or during the pendency of the enforcement action. This reduction may be made before issuing the Administrative Civil Complaint. Facilities will not be allowed to delay settling Administrative Civil Complaints in order to determine whether the violative chemical will be delisted.

Attitude

This adjustment has two components: (1) cooperation and (2) compliance. An adjustment of up to 15% can be made for each component:

(1) Under the first component, the Agency may reduce the gravity-based penalty based on the cooperation extended to EPA throughout the compliance evaluation/enforcement process or the lack thereof. Factors such as degree of cooperation and preparedness during the inspection, allowing access to records, responsiveness and expeditious provision of supporting documentation requested by EPA during or after the inspection, and cooperation and preparedness during the settlement process.

(2) Under the second component, the Agency may reduce the gravity-based penalty in consideration of the facility's good faith efforts to comply with EPCRA, and the speed and completeness with which it comes into compliance.

NOTE: See note on page 16 regarding the mutual exclusion of reductions for attitude reduction and voluntary disclosure.

Other Factors as Justice May Require

In addition to the factors outlined above, the Agency will consider other issues that might arise, on a case-by-case basis, and at Regional discretion, which should be considered in assessing penalties. Those factors which are relevant to EPCRA §313 violations include but are not limited to: new ownership for history of prior violations, "significant-minor" borderline violations, and lack of control over the violation. For example, occasionally a violation, while of significant extent, will be so close to the borderline separating minor and significant violations or so close to the borderline separating noncompliance from compliance, that the penalty may seem disproportionately high. In these situations, an additional reduction of up to 25% off the gravity-based penalty may be allowed. Use of this reduction is expected to be rare and the circumstances justifying its use must be thoroughly documented in the case file.

Settlement With Conditions (SWC)**Supplemental Environmental Projects (SEPs):**

Circumstances may arise where a violator will offer to make expenditures for environmentally beneficial purposes above and beyond those required by law in lieu of paying the full penalty. The Agency, in penalty actions in the U.S. District Courts under the Clean Air Act and Clean Water Acts, and in administrative penalty actions under the Toxic Substances Control Act, has determined that crediting such expenditures is consistent with the purpose of civil penalty assessment. Although civil penalties under EPCRA §313 are administratively assessed, the same rationale applies. This adjustment, which constitutes a credit against the actual penalty amount, will normally be discussed only in the course of settlement negotiations.

Other Settlements With Conditions may be considered by EPA Regional Offices as appropriate.

Before the proposed credit amounts can be incorporated into a settlement, the complainant must assure himself/herself that the company has met the conditions as set forth in current or other program specific policy guidance. The settlement agreement incorporating a penalty adjustment for an SEP or any other SWC should make clear what the actual penalty assessment is, after which the terms of the reduction should be clearly spelled out in detail in the CAFO/CACO. A cash penalty must always be collected from the violator regardless of the SEPs or SWCs undertaken by the company. Finally, in accordance with Agency-wide settlement policy guidelines, the final penalty assessment contained in the CACO/CAFO must not be less than the economic benefit gained by the violator from noncompliance.

Ability to Pay

Normally, EPA will not seek a civil penalty that exceeds the violator's ability to pay. The Agency will assume that the respondent has the ability to pay at the time the complaint is issued if information concerning the alleged violator's ability to pay is not readily available. Any alleged violator can raise the issue of its ability to pay in its answer to the civil complaint, or during the course of settlement negotiations.

If an alleged violator raises the inability to pay as a defense in its answer, or in the course of settlement negotiations, it shall present sufficient documentation to permit the Agency to establish such inability. Appropriate documents will include the following, as the Agency may request, and will be presented in the form used by the respondent in its ordinary course of business:

1. Tax returns
2. Balance sheets
3. Income statements
4. Statements of changes in financial position
5. Statements of operations
6. Retained earnings statements
7. Loan applications, financing and security agreements
8. Annual and quarterly reports to shareholders and the SEC, including 10 K reports
9. Business services reports, such as Compusat, Dun and Bradstreet, or Value Line.
10. Executive salaries, bonuses, and benefits packages.

Such records are to be provided to the Agency at the respondent's expense and must conform to generally recognized accounting procedures. The Agency reserves the right to request, obtain, and review all underlying and supporting financial documents that form the basis of these records to verify their accuracy. If the alleged violator fails to provide the necessary information, and the information is not readily available from other sources, then the violator will be presumed to be able to pay.

SETTLEMENT

Any reductions in penalties are to be made in accordance with this penalty policy. In preparing Consent Agreements, Regions must require a statement signed by the company which certifies that it has complied with all EPCRA requirements, and specifically §313 requirements, at all facilities under their control.

Any violations reported by the company or facility in the context of settlement are to be treated as self-confessed violations or treated as a failure to report in a timely manner if the company has not submitted the report. If a Region wishes to enter into a Settlement Agreement for the facility/company to audit its facility/company, then the Consent Agreement and Final Order may contain this agreement. A Region may choose to agree to assess prior stipulated penalties for the violations found during the compliance audit, or may choose to assess any such violations in accordance with this enforcement policy. Reductions for compliance audits cannot exceed the after-tax value of the compliance audit. Finally, as stated above, a cash penalty must always be collected from the violator regardless of the SEPs or SWCs undertaken by the company.

ALTERNATE THRESHOLD EXEMPTION ERP AMENDMENT

December 6, 1996

VIOLATION

Failure to File annual certification in a timely manner - Circumstance Level 1

VIOLATION

Filing an annual certification in lieu of the Form R when facility did not qualify for the exemption - Circumstance Level 3

VIOLATION

Recordkeeping

- a) Failure to maintain records as prescribed at 40 CFR §372.10(d).
Circumstance Level 2

- b) Failure to maintain complete records as prescribed at 40 CFR §372.10(d)
Circumstance Level 4

SUMMARY OF EPCRA VIOLATIONS AND PROPOSED PENALTY**I. Facility Information**

BASF Catalysts LLC
 1800 East President Street
 Savannah, Georgia

>50 employees
 > 10 million corporate sales

II. Penalty Calculation Table

Violation	Calendar Year	Chemical	Quantity Pounds	Matrix Cell	Maximum Penalty	Proposed Penalty
EPCRA § 313	2003	Nitric Acid	> 10 times 25,000 pounds	1B	\$43,844 (2 RL) EPA State	\$21,922
EPCRA § 313	2004	Nitric Acid	> 10 times 25,000 pounds	1B	\$43,844 (2 RL) EPA State	\$21,922
EPCRA § 313	2005	Nitric Acid	> 10 times 25,000 pounds	1B	\$43,844 (2 RL) EPA State	\$21,922
				Sub Total	\$131,532	\$65,766
				Rounded to Nearest \$100		\$65,800

EPA REGION 4 EPCRA INSPECTION REPORT

Date: 11/10/07 Time: 8:00 am
 Inspector(s): (1) ERIKAL BELDEN (2) _____
 Inspection Type (Circle all that apply): 103 / 304 311/312 313 313DQ

FACILITY INFORMATION:

Facility Name: BASE Catalysts hhl
 Facility Address: 1800 E. President St.
 City: Lawrenceville State: GA Zip: 31404
 County: Chatham Phone No. 912 651 1220
 Contact and Title: Michelle Nooney
 E-mail address: michelle.nooney@base.com
 How long owned/operated, Recent sale of facility: 1980's
BASE bought Engle hard
 NAICS Code: 285188 SIC Code: 3395
 No. of Employees: 100

ENTRANCE INTERVIEW (with person in charge of environmental matters or in charge of the facility)

1. Present credentials and explain purpose of visit. [Inspection to inform regulated community on requirements of the Emergency Planning and Community Right-To-Know Act (also known as EPCRA or SARA Title III) and to ensure compliance].
2. Explain Notice of Inspection (NOI) and have an official sign.
3. Obtain general facility information including an explanation of what the facility does [to determine how or if chemicals may be used at the facility].
4. Provide brief explanation of EPCRA if person is unfamiliar with the law.

Facility Operatio	Process Description:
	<i>See Document #1</i>

FACILITY TOU SITE REVIEW (include types of chemicals and container size)

Chemical	Quantity	UST	AST	Drum Storage	Other	Inside	Outside
<i>phosphoric acid</i>						<input checked="" type="checkbox"/>	

DOCUMENTS COLLECTED FOR REVIEW AT THE OFFICE (check applicable)

- 1. MSDS (for large quantities, EHSs or TRI chemicals)
- 2. Inventory records, receipt documents, purchase orders *possible info request*
- 3. Annual use records (for TRI chemicals)
- 4. Certified receipts or other proof of submittal of Tier IIS and/or Form Rs
- 5. Pictures taken at the facility)

CLOSING CONFERENCE

Facility representative provided with copies of [circle applicable]:

Notice of Inspection	<input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No	EPCRA Fact Sheet	<input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No
Receipt for Documents	<input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No	EPCRA Resource (contacts)	<input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No
Small Business Resource	<input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No

VIOLATIONS _____ **NO VIOLATIONS** _____

Potential Violations (Need more information)

Violations:

STATUE	Year	Year	Year
CERCLA 103			
EPCRA 304			
EPCRA 311			
EPCRA 312			
EPCRA 313			

Did you observe deficiencies during on-site inspections? Yes _____ No X

If you observed deficiencies, did you communicate the deficiencies during inspection?
 Yes _____ No X

Did you provide general Compliance Assistance in accordance with the policy on the role of the EPA Inspector in providing Compliance Assistance during inspection?
 Yes _____ No _____

Did you provide site- specific Compliance Assistance? Yes _____ No _____

SUMMARY Need to compare Tier II chemicals
to TRI chemicals reported & determine
if TRI thresholds were exceeded for Nitric acid,
Phosphoric acid, sulfuric acid

TRI chemicals reported for 2005 - ammonia, formic
acid, & Nitrate compounds

[Signature]
 Inspectors Signature

 Inspector Signature

11/10/07
 Date

A - Facility Information

Facility: ENGELHARD CORP.

Application: 2005 Title V Renewal Application

Description Alumina

Raw materials are mixed together and crystallized. Next, the alumina is washed on belt filters. The product is then spray dried into small particles and pneumatically conveyed to storage silos. From there the product is loaded into either railcars, trucks or supersacks for delivery to downstream catalyst manufacturing facilities.

Process Fluid Cracking Catalyst**Description**

Raw materials are mixed in mix tanks and then crystallized in reactors. Then the catalyst goes through a base exchange process on belt filters, rotary dryers and calciners. The finished catalyst is pneumatically conveyed to storage silos. From there the product is loaded into either railcars or trucks for delivery to oil refineries.

Process Microspheres**Description**

Kaolin slurry is mixed with raw/batch materials, spray dried into small particles, calcined and sifted. Finished microspheres are pneumatically conveyed to storage silos. From there the product is loaded into either railcars or trucks for delivery to downstream catalyst manufacturing facilities or used on-site to manufacture catalyst.

Facility SIC Code 3295**Code Description** MINERALS GROUND OR TREATED**Other ID Numbers:**

FEI Number:	221586002
Dun and Bradstreet Number:	099290629

These corresponding attachments are submitted in electronic form (.doc, .pdf, .jpg, or similar format).

Corresponding Attachments**Number
Submitted**

BASF Catalysts ^{5.03/07} 4/10/07
Michelle Nooney

Process Description

See Title V process description

Blend for slurry, dry, ion
exchange, drying & powdered product

to petroleum refining industry

Catalysts to help to crack crude
into different petroleum products

Bulk

55 drums - N/A

Tank farm for bulk chemicals

No underground storage area

Some slurry tanks inside

Phosphoric acid tank inside

TRI reports under Englehard
corporation.

Report for Ammonia, Formic
acid, nitrate compounds

(2)

TRI 2006 ✓

2005 ✓

2004 ✓

Members of LEPC

Tier II forms

2007 ✓

2006 ✓

2005 ✓

Aluminum Hydroxide Oxide

Aluminum Oxide

Aluminum Oxidehydrate

Nitric Acid

Phosphoric Acid

Sulfuric Acid

MSDS ~~keep~~ kept in main building

also,

electronically available to operators



MSDS sheets for new chemicals
have been updated to Fire Dept.



Enforcement & Compliance History Online (ECHO)

You are here: EPA Home Compliance and Enforcement ECHO Search Data Search Results

Enforcement Case Report

Report's General Error Data Dictionary

For Public Release - Unrestricted Dissemination. Report Generated on 03/20/09
US Environmental Protection Agency - Office of Enforcement and Compliance Assurance

Data Dictionary

Case Number: 06-2007-0627
Case Name: BASF Catalyst LLC
Case Type: Administrative - Formal
Result of Voluntary Disclosure? Yes
Case Status: Closed
Multi-media Case? No
Regional Docket Number: No Data
Enforcement Type: EPCRA 325 Action For Penalty
Relief Sought: No Data
Violations: Toxic Release Inventory (Section 313)
Enforcement Outcome: Final Order No Penalty

Penalties:

*EPA settles the vast majority of its enforcement actions and almost all of these cases are settled without an admission of liability. The agreement to pay a penalty as part of a settlement does not necessarily reflect an admission of liability for environmental violations by the company.

Total Federal Penalty Assessed or Agreed To (not necessarily an admission of liability)	Total State/Local Penalty Assessed	Total SEP Cost	Total Compliance Action Cost	Total Cost Recovery
			\$1,000	

Case Summary:

Data Dictionary

BASF Catalyst disclosed violations of EPCRA 313 to U.S. EPA - after reviewing the Audit Policy Checklist they submitted, 100% of the gravity base penalty was mitigated. Economic benefit was deemed insignificant.
ayv

Data Dictionary

Laws and Sections:

Law	Sections	Programs
EPCRA	313	Toxics Chemical Release Inventory (TRI)

Citations:

Title	Part	Section
No Data Records Returned		

Program Links:

FRS Number	Program	Program ID
110030908034	ICIS	600027647

Facilities:

Data Dictionary

FRS Number	Facility Name	Address	City Name	State	Zip	SIC Codes	NAIC Codes
110030908034	BASF CATALYST LLC	10001 CHEMICAL ROAD	PASADENA	TX	77507	2819	

Defendants:

Data Dictionary

Defendant Name	Named in Complaint	Named in Settlement

Case Milestones:Data
Dictionary

Event	Actual Date
Final Order Issued	07/17/2007
Enforcement Action Closed	07/17/2007

Pollutants:Data
Dictionary

Pollutant Name	Chemical Abstract Number
Hexane	110543
Phthalic anhydride	85449
Epichlorohydrin	106898

Data
Dictionary**Enforcement Conclusion 1**

Enforcement Conclusion Type: Notice of Determination
 Enforcement Conclusion Name: BASF Catalyst LLC
 Facilities in Settlement (FRS ID): 110030908034
 Settlement Entered Date: 07/17/2007
 Settlement Lodged Date:

Enforcement Conclusion Dollar Amounts:

Federal Penalty Assessed or Agreed To	State/Local Penalty Assessed	SEP Cost	Compliance Action Cost	Cost Recovery
			\$1,000	

Pollutant Reductions:

Pollutant	Annual Amount	Units	Media	SEP or Comp
No Data Records Returned				

Improvements in Reporting:

Pollutant	Average Annual Value	Units	Media
No Data Records Returned			

Complying Actions:

Complying Action Type	Text Description
Reporting	NA

Supplemental Environmental Projects:

Categories	Description
No Data Records Returned	

[Click here, for a Detailed Facility Information.](#)

This report was generated by the Integrated Data for Enforcement Analysis (IDEA) system, which updates its information from program databases monthly. The data were last updated: ICIS: 02/14/2009

Version 12/03/08

Complainant's Statement Regarding the Proposed Penalty

Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), authorizes EPA to assess penalties of up to \$25,000.00 for each violation of EPCRA § 313, 42 U.S.C. § 11023. Unlike other penalty provisions of EPCRA, Section 325(c) does not enumerate criteria that must be considered by EPA when calculating penalties. In the absence of such criteria, EPA relies upon the statutory factors set forth in Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et. seq.*, as referenced in EPCRA § 325(b)(2). This reliance has been implicitly approved by the Environmental Appeals Board ("EAB"), as well as by federal district courts. *See In re Catalina Yachts, Inc.*, 1999 WL 198912 (EAB, Mar. 24, 1999); *Steeltech, Ltd. v. United States EPA*, 105 F. Supp. 2d 760 (W.D. Mich. 2000). The TSCA penalty criteria are: the nature; circumstances; extent; and, gravity of the violations; and, with respect to the violator: ability to pay; effect on ability to continue to do business; any history of prior violations; culpability; and, such other matters as justice may require. *See TSCA § 15*, 15 U.S.C. § 2615(B).

The EAB has acknowledged that the TSCA penalty criteria need not be compartmentalized so long as it is clear that they are considered when calculating a penalty. *See Catalina Yachts*, 1999 WL at 7. As such, EPA relies upon its "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [Amended]" ("policy" or "ERP"), which incorporates the TSCA criteria into a penalty equation designed to establish a fair, uniform and consistent application of EPCRA § 313 penalties. The ERP was amended on June 5, 2006, to adjust for the Civil Monetary Penalty Inflation Adjustment Rule published on February 13, 2004. *See 69 Fed. Reg. 7121*. Pursuant to the June 5, 2006, amendment, all violations of EPCRA § 313 occurring on or after March 15, 2004, are subject to statutory penalties adjusted for inflation.

Complainant relied on the ERP when calculating the proposed penalty in this matter, and thus, proposed a penalty consistent with the applicable TSCA penalty criteria. Under the ERP, penalties are determined in two stages: calculation of a "gravity-based penalty," and adjustments to the gravity-based penalty.

A. Calculation of the Gravity-Based Penalty

The first step of the penalty calculation process assesses the gravity of the violation by considering the circumstances and extent of the violation. The circumstance level accounts for the nature and seriousness of the violation as it relates to the accuracy and availability of EPCRA § 313 reporting information to communities, states, and the federal government. The extent level component of the gravity-based penalty accounts for the quantity of each EPCRA § 313 chemical manufactured, processed or otherwise used by the facility, and the size of the facility as determined by its number of employees and the gross sales of the total cooperate entity. From these two elements, a gravity-based penalty is calculated by incorporating both the circumstance level and the extent level into the ERP's penalty matrix. The total penalty is determined by calculating a penalty for each violation on a per-chemical, per-facility, per-year basis.

i. Applicable Circumstance Level

The three counts alleged in the Complaint are defined by the policy as “Failure to Report in Timely Manner.” See ERP at Page 4. This category applies to EPCRA § 313 reports that are submitted after the annual July 1 due date. There are two distinct categories for this violation. “Category I” violations are those reporting violations where the overdue report is submitted one year or more after the due date, whereas “Category II” violations are those reporting violations for which the overdue report is submitted less than one year after the due date. *Id.* Because EPCRA § 313(a) establishes a reporting system whereby annual data regarding toxic releases and the potential for toxic releases is made available to the public in a timely manner, failure by facilities to comply with this reporting requirement for more than one year completely defeats the purpose of Section 313. Consequently, “Failure to Report in a Timely Manner, Category I” violations are classified as “circumstance level I” under the ERP and incur the greatest penalty. See ERP at Page 12.

The three Form R reports at issue in this case were due July 1, of 2004, 2005, and 2006. All three overdue reports were simultaneously submitted by Respondent on July 13, 2007. As such, each report was submitted more than one year after its due date and is defined as a “Failure to Report in a Timely Matter, Category I” violation, classified as “circumstance level 1” violations in the penalty matrix.

ii. Applicable Extent Level

As indicated above, the extent level of a violation is based upon the amount of EPCRA § 313 chemical involved in the violation and the size of the business responsible for that violation. The chemical involved is the primary determinative factor of the extent level, whereas the size of the business is considered as a secondary element. This approach reflects the underlying purpose of EPCRA § 313 is to compile accurate, reliable information on the potential chemical hazards associated with the presence and release of toxic chemicals and to make that information available to the public. The potential harm associated with the failure to provide this information to state and federal officials directly correlates with the quantity of toxic chemicals involved in the violation. Consequently, the ERP extent level is calculated by first considering the quantity of toxic chemical involved in relation to that chemical’s reporting threshold. BASF Catalysts failed to report nitric acid, an EPCRA listed toxic chemical which has a reporting threshold of 25,000 pounds per year. See 40 C.F.R. Part 372.65. The ERP distinguishes between facilities that process ten times or more the toxic chemical threshold, and those that exceed the threshold by less than that amount. See ERP at Page 9. In this matter, it is undisputed that Respondent’s facility exceeded the reporting threshold level for nitric acid for years 2004, 2005, and 2006. These exceedances, however, did not exceed ten times or more the threshold level.

As a secondary component of the extent level, the ERP accounts for the size of the business responsible for that violation. The Policy acknowledges that deterrence is an important goal of EPCRA § 313 enforcement. To achieve a uniform deterrent effect among regulated entities, EPA has found that a correlation between the size of the company and the size of the penalty is necessary. EPA has determined that the deterrent effect of a smaller penalty upon

companies employing less than 50 employees with total corporate entity sales not exceeding ten million dollars annually is likely to be equal to that of a larger penalty upon a large company. Therefore, the ERP provides smaller gravity-based penalties for facilities meeting those criteria. However, where violations are committed by a company such as BASF Catalysts, which employs more than 50 employees and generates more than 10 million dollars in sales, EPA has determined that a larger penalty is necessary to provide sufficient deterrence.¹

Based on the above described quantity of nitric acid involved in the violations and the size of BASF Catalysts, the violations are assigned an extent level of "B" under the ERP. See ERP at Page 9.

iii. Matrix Penalty Calculation

The ERP provides specific gravity-based penalties to correspond to the circumstance and extent level of the violation. These penalties are organized into a "Penalty Matrix," which provides that each circumstance level "1," extent level "B" violation results in a penalty of \$21,922.00. Consequently, Respondent's three "B-1" violations result in an ERP penalty of \$65,766.00, which penalty is then rounded to the nearest unit of \$100.00 consistent with Civil Monetary Penalty Adjustment Rule. 69 Fed. Reg. 7121. Once rounded, the resulting total gravity-based penalty for Respondent's violations is \$65,800.00.

B. Adjustments to the Gravity-Based Penalty

Consistent with the TSCA criteria and the ERP, Complainant's proposed penalty also reflects EPA's consideration of the following adjustment factors: whether the violation was disclosed voluntarily; whether the violator has a history of prior violations; whether the chemical at issue has been recently delisted; the violator's attitude; and, other factors as justice may require. EPA has determined that, as discussed below, no adjustments to Respondent's gravity-based penalties are warranted.

i. No Adjustment for Voluntary Disclosure

Under certain circumstances, the ERP provides an incentive for regulated facilities to voluntarily disclose violations of EPCRA § 313.² See ERP at Page 14. For those facilities that make a qualifying voluntary disclosure pursuant to the ERP, the gravity-based penalty associated with that disclosure may be reduced by up to fifty percent. The ERP, however, stipulates that facilities will not be eligible for voluntary disclosure reductions "if the company has been notified of a scheduled inspection or the inspection has begun, or the facility has otherwise been contacted by U.S. EPA for the purpose of determining compliance with EPCRA § 313." ERP at

¹ Respondent is a global division of the chemical company BASF AG. According to publicly available information on Respondent's website, BASF Catalysts employs more than 5000 employees and BASF AG generated approximately \$66.1 billion dollars of sales in 2006. See BASF Catalysts About Us, <http://www.catalysts.basf.com/Main/aboutus> (last visited March 17, 2009).

² EPA has published a Final Policy Statement entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" ("Audit Policy"), which also provides incentive for regulated entities to voluntarily discover and disclose violations of Federal environmental requirements including EPCRA § 313. See 65 Fed. Reg. 19618.

Page 14. EPA credits only pre-enforcement voluntary disclosures to provide incentive for regulated entities to take initiative to find violations on their own and disclose them promptly. This requirement reflects EPA's belief that greater EPCRA § 313 compliance is achieved when the regulated community is provided incentive to achieve compliance. However, crediting disclosures made after the initiation of an EPA compliance investigation would provide regulated entities with an inverse incentive to withhold their own environmental compliance activities and instead wait for some indication of pending enforcement action before disclosing violations.

In this matter, Respondent submitted a June 5, 2007, letter to EPA Region 4 purporting to voluntarily disclose the three subject violations at issue herein.³ This disclosure, however, occurred after EPA had initiated an EPCRA compliance investigation at Respondent's facility on April 10, 2007. The investigation began with an inspection of Respondent's facility by an EPA inspector who, at the conclusion of the facility inspection, informed Respondent's representative that no EPCRA compliance determination had been made, and that subsequent analysis into the facility's compliance status would occur. EPA was in the process of making a compliance determination with respect to Respondent's facility at the time the Agency received the June 5, disclosure letter.

In light of the ongoing investigation into the facility's EPCRA compliance status at the time of the purported voluntary disclosure, EPA determined that Respondent was ineligible for voluntary disclosure adjustments because the disclosure occurred during an ongoing EPCRA compliance investigation of the facility.

ii. No Adjustment for Prior History of Violations

The ERP also provides for adjustment to gravity-based penalties for a facility that has a history of prior violations. *See* ERP at Page 16. This adjustment accounts the nature of the violations and whether they are part of a larger pattern of EPCRA § 313 non-compliance. Under the ERP penalty matrix, the specified penalties were intended for first-time EPCRA § 313 offenders. As such, where a facility has a history of prior violations, an upward adjustment to the penalty matrix's gravity-based penalties is warranted.

A search of EPA enforcement records was performed at the time BASF Catalysts' proposed penalty was calculated. In that search, EPA identified a series of EPCRA § 313 violations at another BASF Catalysts facility located in Pasadena, Texas.⁴ *See* Complainant's Exhibit 5. The violations involved six annual reporting violations that were disclosed to EPA by BASF Catalysts pursuant to the Audit Policy. Unlike the current violations, BASF Catalysts' disclosures for the Pasadena facility occurred prior to any EPA compliance investigation of the subject facility. As such, the gravity-based penalties associated with the Pasadena violations

³ Respondent's June 5, 2007, letter was purported to be a self disclosure under EPA's Audit Policy. Prior to issuing the complaint in this matter, EPA determined that Respondent's disclosure was not eligible under the Audit Policy as it failed to satisfy Condition D(4) – Discovery and Disclosure Independent of Government or Third-Party Plaintiff.

⁴ Companies with multiple establishments are generally considered as one when determining compliance history for purposes of penalty calculations under the ERP. *See* ERP at Page 17.

were fully mitigated pursuant to the Audit Policy. The parties entered into a Consent Agreement and Final Order (Docket No. EPCRA-06-2006-0602) that was signed July 17, 2007.

Under the ERP, previous violations must have occurred within five years of the present violation. The date of the present violations is one year from July 1 of the year the Form R report was due. For computation purposes, the date of the previous violations is calculated from the date the prior violation becomes a final order. *See* ERP at Page 17. In the case of BASF Catalysts' violations at the Pasadena facility, although the violations occurred for reporting years 2003, 2004, and 2005, these violations were not resolved pursuant to a final order until July 17, 2007. Thus, according to the ERP, these violations did not accrue for purposes of penalty adjustment until after the present violations had occurred (July 1 of 2004, 2005, and 2006). As a result, EPA has determined that these violations do not constitute "prior violations" under the ERP.

EPA is aware of no other past violations that warrant an upward adjustment to the gravity-based penalty in this matter.

iii. No Adjustment for Delisted Chemicals

Where EPA has delisted a chemical by final Federal Register Notice, the Agency may settle cases involving that chemical for a reduced penalty. Nitric acid, the chemical at issue in this case, has not been delisted. No adjustment pursuant to this factor is warranted.

iv. No Adjustment for Attitude

Under the ERP, adjustments to the gravity-based penalty are possible for the "attitude" of the violator. This adjustment is divided into two components; cooperation and compliance. Under the cooperation component, the Agency may reduce the penalty based on the cooperation extended to EPA throughout the evaluation and enforcement process or the lack thereof. EPA has not experienced a degree of cooperation in this matter sufficient to compel the Agency to adjust the gravity-based penalty. EPA is also unaware of any good faith efforts by Respondent to comply with EPCRA § 313 that warrant a reduction in the gravity-based penalty. BASF Catalysts is a large, Fortune 500, corporate entity capable of maintaining an effective environmental compliance program. The three consecutive years of reporting violations at issue in this case do not evidence a good faith effort by BASF Catalysts to comply with EPCRA -- nor does the purported self disclosure letter submitted only after EPA initiated a compliance investigation of the facility. Consequently, no attitude adjustment is warranted to the gravity-based penalty.

v. No Adjustment for Other Factors as Justice May Require

The ERP provides an adjustment factor for "other factors as justice may require." *See* ERP at Page 18. This catchall adjustment provides the Agency with an opportunity to account for circumstances or considerations under the TSCA criteria that may not have been captured by the other enumerated ERP adjustment factors. EPA did consider BASF Catalysts' relatively new

ownership history of the facility as a factor potentially warranting mitigation of the gravity-based penalty, however, the Agency ultimately determined such a reduction was not warranted.

The BASF Catalysts Savannah facility was formerly known as the Engelhard Corporation ("EC"). In June 2006, the publically held shares of EC were acquired by an affiliate of BASF Corporation, which affiliate then merged into EC, with EC being the surviving entity. On August 1, 2006, EC was converted to a limited liability company known as BASF Catalysts. Consequently, BASF Catalysts is and was the owner and operator of the Savannah facility at all times relevant to the violations alleged herein. Given this corporate history, EPA believes the company now known as BASF Catalysts was not sufficiently distinct from EC so as to warrant a new ownership for history of past violations adjustment under the ERP.

Furthermore, penalty adjustments based upon new ownership of a facility with a history of past violations are typically applied only where a corresponding upward adjustment to the gravity-based penalty has been applied for a history of past violations. As discussed above, EPA has not adjusted BASF Catalysts' gravity-based penalty based upon any previous violations. Given that no upward adjustment was applied to the penalty, EPA does not believe a corresponding downward adjustment for new ownership for history of past violations is applicable.

vi. No Adjustment for Ability to Pay

Complainant considered Respondent's ability to pay and the effect of the proposed penalty on BASF Catalysts' continued ability to do business. EPA has determined that Respondent is capable of paying the proposed penalty and that such penalty will not affect Respondent's ability to continue business.

C. Proposed Penalty

In light of the foregoing considerations, EPA has concluded that a penalty of \$65,800.00, is consistent with the TSCA penalty criteria and the ERP, and is appropriate for the three violations of EPCRA § 313 alleged in this matter.