

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

THOMAS PETROLEUM, LLC
PILOT THOMAS LOGISTICS, LLC

RESPONDENT

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DOCKET NO. EPCRA-06-2019-0501

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

Response to Respondent's Prehearing Exchange

In response to Respondent's Prehearing Exchange, Complainant primarily relies on the information provided in its Complaint and Initial Prehearing Exchange. Complainant will address a few specific points raised in Respondent's Prehearing Exchange.

Annual TRI Summary

Respondent states that after discovering its failure to file TRI reports, "Thomas did not file for prior years, including 2012, because Thomas correctly understood EPA had already incorporated TRI data reports for 2012 and before into its annual TRI summaries published for those years and that filing late reports would serve no practical purpose."

Though Thomas chose not to file its 2012 TRI reports even after discovering its failure, EPA is not seeking to increase the penalty because of a willful failure to report, as allowed under the Enforcement Response Policy (ERP) (CX 46, p. 17), but is instead treating those violations as Circumstance Level 1. A Circumstance Level 1 violation is the most serious circumstance in part because it means reporting data for that year would not be available for TRI annual summaries.

It is true that the TRI Annual Report was published on February 4, 2014, however, reported TRI data is widely available and accessed by the public on EPA's website through the Envirofacts database—by providing the TRI information even after publication of the annual report, Thomas would have allowed regulators and the communities around Thomas facilities to access accurate information about the toxic chemicals stored at those sites.

Voluntary Disclosure

Respondent argues that reductions found in the Voluntary Disclosure portion of the ERP would be appropriate in this situation, while not arguing that Thomas met the requirements for voluntary disclosure.

Eligibility for voluntary disclosure under the ERP requires specific actions absent here:

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. (CX 46, p. 17)

Respondent relies on an Environmental Appeals Board Decision, *In re: Steeltech, Ltd.*, 8 E.A.D. 55, 1999 WL 673227, to support its argument that application of the voluntary disclosure reduction would be appropriate in this case. Reliance on this case is misplaced because in *Steeltech*, unlike in this case, the parties stipulated that the violations had been voluntarily disclosed. 1999 WL 673227 at *3.

This stipulation formed the basis for the ALJ and the EAB's decisions and is missing in this case¹.

¹ "Complainant, in its enforcement discretion, chose to consider those violations to have been 'voluntarily disclosed' within the meaning of the ERP and Complainant's discretion in this instance will not be disturbed." IN RE: STEELTECH, LIMITED, 1999 WL 673227, at *10

Form R/Form A

Respondent argues that the ERP is an inadequate guide to this penalty calculation because the ERP focuses on Form R filings.

Form A annual certifications were not created until 1994. (CX 47) The ERP was issued in 1992, prior to the creation of Form A, so of course it did not address Form A annual certifications. (CX 46) A subsequent amendment in 1996 addressed annual certifications, classifying any failure to file an annual certification in a timely manner as a Circumstance Level 1 violation. (CX 46, p. 26) As Complainant mentioned in its prehearing exchange, this is consistent with the intent behind the creation of Form A annual certification:

EPA's determination on this issue in no way limits or affects its ability to bring enforcement actions against a facility. If a facility wishes to take advantage of the alternate threshold, then it must determine that its annual reportable amount did not exceed 500 pounds of the chemical for that year, it must file a certification statement, and it must keep appropriate records. Therefore, if the facility fails to submit either a certification statement or a Form R, the facility is a non-reporter and faces penalties up to \$25,000 per day per violation

(CX 47, p. 24)

DOJ Criminal Compliance Evaluation

EPA does not believe the DOJ criminal compliance program evaluation referenced by Respondent is relevant to this analysis, though it acknowledges that development of corporate compliance programs may be appropriately considered in other areas under the ERP.

Statement of the Proposed Penalty

In an effort to compile relevant information, Complainant will reiterate some portions of its Initial Prehearing Exchange, below, along with more specific penalty amounts related to the individual violations.

The purpose of the ERP “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[.]”

Here, because of the unusually large number of violations, the ERP is especially helpful in uniformly classifying the violations. The large penalty and number of violations are a logical outgrowth of the wide-ranging noncompliance with EPCRA reporting requirements. Thomas operated twelve facilities in Region 6 that did not report their use of toxic chemicals for many years. This failure to report frustrated regulatory activities by EPA and the states, but also unlawfully deprived the communities near these facilities of knowledge of these toxic chemicals.

Information related to the extent, nature, and gravity of the violation:

All the violations alleged in the Complaint are for a failure to report. A failure to report is the most serious violation of EPCRA 313. The ERP reflects this, as a failure to report for more than a year from the due date is a Circumstance 1 violation, regardless of whether the report could have been filed as a Form A annual certification (CX 2-42; CX 46, p.26). As stated above, this approach is consistent with the intent behind the creation of Form A annual certification.

That a reporting facility may have opted to use Form A annual certification does not change the nature of the violation, as the reporter must make the determination to use Form A in lieu of Form R, and the Form A is not part of an inherently different reporting system.

Under the ERP, those reports that are more than a year late (classified as Circumstance Level 1) are considered more serious violations than those that are less than a year late (Classified as Circumstance Level 4) (CX 2-42; CX 46). Penalties for Circumstance Level 1

violations are calculated using the ERP's penalty matrix and penalties for Circumstance Level 4 violations are calculated using the "per-day" formula found in the ERP.

The ERP bases the extent level of a violation on the quantity of the chemical manufactured, processed or otherwise used by the facility, the size of the facility based on the number of employees at the facility, and the gross sales of the violating facility's total corporate entity (**CX 2-42; CX 46; CX 45 2015-12-01 Letter to D Riley with Sales and FTE Chart**)

The ERP classifies violations into three quantifiable extent levels:

Extent Level A

In the first category are violations related to facilities that manufactured, processed, or otherwise used more than 10 times the legal threshold of the chemical, employed more than 50 employees, and where the total corporate entity had more than \$10 million in annual sales. In the penalty policy they are referred to as "Extent Level A" violations.

Extent Level B

The second category is "Extent Level B" violations and includes those violations where the facility either:

- a) Processed, manufactured, or otherwise used more than 10 times the legal threshold of the chemical but did not have both more than \$10 million in annual sales for the total corporate entity and 50 employees at the facility; or
- b) Had more than \$10 million in annual sales for the total corporate entity and 50 employees at the facility, but did not process, manufacture or otherwise use more than 10 times the legal threshold of the chemical.

Extent Level C

The third category is "Extent Level C" and includes those violations that do not rise to the level of severity of Extent Level A or B violations. Functionally, this means those violations where:

- a) The facility did not exceed the chemical threshold by 10 times, and

- b) Did not have both more than \$10 million in annual sales for the total corporate entity or more than 50 employees at the facility

Please note that the ERP considers \$10 million in annual sales for the total corporate entity, and not on a facility basis, so all the violations in the Complaint include that element.

Summary Classifications Table

Based on the standards and supporting documentation discussed above, Complainant believes the table on the following page accurately reflects the apparent extent and circumstance level of the violations based on the information now available in the supporting documentation and in the Joint Stipulations.

Extent Level A	Extent Level B	Extent Level C
<p>Circumstance Level 1</p> <p>Laredo: Counts 78, 80, 82, 83 Odessa: Counts 90-94, 98 Tyler: Count 117 Victoria: Counts 126, 127</p>	<p>Circumstance Level 1</p> <p>Damascus: Count 5 Broussard: Count 13 Bridgeport: Count 48 Hobbs: Counts 21, 23-27 La Grange: Counts 69, 70 Laredo: Counts 79, 81, 84-87 Odessa: Counts 95-97, 99 Robstown: Count 59 Tyler: Counts 115, 116, 118-121 Victoria: Counts 124, 125, 128-133</p>	<p>Circumstance Level 1</p> <p>Damascus: Counts 1-4, 6-9 Broussard: Counts 12, 14, 15 Beaumont: Counts 30-37 Bridgeport: Counts 46, 47, 49-55 Hobbs: Counts 22, 28 La Grange: Counts 68, 71-76 Robstown: Counts 58, 60-66 San Benito: Counts 102-108</p>
<p>Circumstance Level 4</p> <p>Odessa: Count 100 [211 days],</p>	<p>Circumstance Level 4</p> <p>Broussard: Count 17 [119 days] Laredo: Count 88 [211 days] Tyler: Count 122 [94 days] Victoria: Count 134 [211 days]</p>	<p>Circumstance Level 4</p> <p>Damascus: Counts 10 [211 days], Broussard: Counts 16, 18-20 [119 days] Beaumont: Counts 38-45 [118 days] Bridgeport: Counts 56 [211 days] San Benito: Counts 109-114 [119 days]</p>

The ERP also requires EPA to consider adjustments to the penalty based on the following criteria:

Ability to Pay and Ability to Continue to Do Business

Respondent has not alleged in its Answer or by other means any inability to pay a potential penalty or provided any financial documentation to Complainant on inability to pay.

Similarly, Respondent has not provided any financial documentation to Complainant that paying a potential penalty may endanger its ability to continue to do business.

History of Prior Violations and the Degree of Culpability

Complainant is unaware of any prior violations as the term is defined in the ERP (“In order to constitute a prior violation, the prior violation must have resulted in a final order.”) Respondent did fail to file TRI notifications at these same facilities for the years before 2012 (CX 2-42).

Complainant is unaware of any voluntary disclosures as the term is defined in the ERP.

Delisted Chemicals

Complainant is unaware of any delisted chemicals in this case.

Cooperation and Compliance

Complainant considers the cooperation given to EPA throughout the compliance evaluation and enforcement process when formulating a penalty (CX 46). Thomas was not initially well prepared when contacted about the Tyler Facility (CX 2 and 3) but was cooperative and responsive and provided records and answers to EPA’s questions leading up to the inspection (CX 4,5 and 7-13). All the information requested by EPA inspector Larry Stranne for the inspection was available during the inspection (CX 6).

As stipulated by the Parties, Thomas assisted EPA in its investigation and audit, and has provided documentation to EPA.

Complainant also considers Thomas’s good-faith efforts to comply with EPCRA, and the speed and completeness with which it comes into compliance (CX 46). As stipulated, Thomas voluntarily filed TRI reports for its Damascus, Bridgeport, Hobbs, La Grange, Laredo, Odessa, Robstown, Tyler and Victoria facilities for calendar year 2013 on June 29, 2014 (Stipulations).

Respondent did not file reports for previous years until contacted by EPA (**CX 5, 6, 8-13 and applicable TRI Reports**).

Complainant believes consideration of Respondent's corporate compliance programs, to the extent they dealt with promptly rectifying TRI reporting deficiencies, are appropriate to consider under this area.

Complainant believes Respondent qualifies for some penalty reduction under this element, as considered below.

Other Factors as Justice May Require

Complainant also considers other issues that might arise on a case-by-case basis which should be considered when assessing penalties (**CX 46**). The ERP lists "factors which are relevant to EPCRA §313 violations include but are not limited to: new ownership or history of prior violations, "significant-minor" borderline violations, and lack of control over the violation."

In such a situation, the ERP states that a reduction of up to 25% off the gravity-based penalty may allowed and that "[u]se of this reduction is expected to be rare and the circumstances justifying its use must be thoroughly documented in the case tile."

Complainant notes that while some of the violations alleged in the Complaint may have occurred prior to Thomas's acquisition, the continued failure to report for prior years appears to have continued past that point until brought to Thomas's attention by EPA.

Penalty Breakdown by Count

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as adjusted by 40 C.F.R. Part 19, authorizes EPA to assess a civil penalty for violations of any requirement of EPCRA Section 313, 42 U.S.C. § 11023.

At the time of each of the violations alleged in the Complaint, the maximum daily penalty for each violation was \$37,500.²

Based on the calculations in **CX 53** using formulas found in the ERP³ EPA Penalty Calculation, the penalty for individual counts break out by facility and year as follows:

Damascus Facility

2012

Counts 1-4, 6-9:

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

Count 5:

This violation is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

2013

Count 10:

This violation is an Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50

² When the Complaint in this case was filed, the single day maximum penalty for each violation was \$57,317, but that increase did not apply to violations occurring before November 2, 2015. (CX 46 ERP and 2016 and 2019 Civil Monetary Penalty Inflation Adjustment Rules)

³ As mentioned in the Initial Prehearing Exchange, the ERP was updated in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule, 81 FR 43091 (July 1, 2016), available at the following link. <https://www.govinfo.gov/content/pkg/FR-2016-07-01/pdf/2016-15411.pdf>

employees. This violation is Circumstance Level 4, filed 211 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for Count 10 is \$4,682.

Subtotal for Damascus Facility \$85,482

Broussard Facility

2012

Counts 12, 14, and 15:

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

Count 13:

This violation is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

2013

Counts 16, 18-20

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 4, reported 119 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for each of these counts is \$3,253

Count 17

This violation is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemical and at the time this complaint was filed employed fewer than 50 employees. It is a Circumstance Level 4 violation, reported 119 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for this count is \$13,536.

Subtotal for Broussard Facility \$71,899

Hobbs Facility

2012

Counts 21, 23-27

Each of these violations was Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

Counts 22, 28

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 1 because they were filed over one year late. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

Subtotal for Hobbs Facility \$158,660

Beaumont Facility

2012

Counts 30-37

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 1 because they were filed over one year late. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

2013

Counts 38-45

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 4, reported 118 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for each of these counts is \$3,237.

Subtotal for Beaumont Facility \$82,620

Bridgeport Facility

2012

Counts 46,47, 49-55

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 1 because they were filed over one year late. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

Count 48

This violation is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

2013

Count 56

This violation is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemical and at the time this complaint was filed employed fewer than 50 employees. It is a Circumstance Level 4 violation, reported 211 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for this count is \$4,682.

Subtotal for Bridgeport Facility \$92,572

Robstown Facility

Counts 58, 60-66

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 1 because they were filed over one year late. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

Count 59

This violation is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

Subtotal for Robstown Facility \$80,800

LaGrange Facility

Counts 68, 71-76

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 1 because they were filed over one year late. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

Count 69 and 70

Each of these violations is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

Subtotal for LaGrange Facility \$97,900

Laredo Facility

Counts 78, 80, 82, 83

Each of these violations is Extent Level A because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed more than 50 employees. The gross penalty for each Extent A, Circumstance Level 1 violation is \$37,500.

Counts 79, 81, 84-87

Each of these violations is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

2013

Count 88

This violation is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemical and at the time this complaint was filed employed fewer than 50 employees. It is a Circumstance Level 4 violation, reported 211 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for this count is \$17,464.

Subtotal for Laredo Facility \$311,944

Odessa Facility

2012

Counts 90-94, 98

Each of these violations is Extent Level A because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed more than 50 employees. The gross penalty for each Extent A, Circumstance Level 1 violation is \$37,500.

Counts 95-97, 99

Each of these violations is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

2013

Count 100

This violation is Extent Level A because the facility produced more than 10 times the threshold amount of the subject chemical and at the time this complaint was filed employed more than 50 employees. It is a Circumstance Level 4 violation, reported 211 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for this count is \$27,593.

Subtotal for Odessa Facility \$348,913

San Benito Facility

2012

Counts 102-108

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

2013

Counts 109-114

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 4, reported 119 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for each of these counts is \$3,253

Subtotal for San Benito Facility \$69,148

Tyler Facility

2012

Counts 115, 116, 118-121

Each of these violations was Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

Count 117

This violation is Extent Level A because the facility produced more than 10 times the threshold amount of the subject chemical and at the time this complaint was filed employed more than 50 employees. The gross penalty for each Extent A, Circumstance Level 1 violation is \$37,500.

Count 122

This violation is Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemical and at the time this complaint was filed employed fewer than 50 employees. It is a Circumstance Level 4 violation, reported 94 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for this count is \$8,457.

Subtotal for Tyler Facility \$190,437

Victoria Facility

2012

Counts 124, 125, 128-133

Each of these violations is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent C, Circumstance Level 1 violation is \$7,090.

Counts 126 and 127

Each of these violations was Extent Level B because the facility produced more than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. The gross penalty for each Extent B, Circumstance Level 1 violation is \$24,080.

Count 134

This violation is Extent Level C because the facility produced less than 10 times the threshold amount of the subject chemicals and at the time this complaint was filed employed fewer than 50 employees. These violations are Circumstance Level 4, reported 211 days late. Using the Circumstance Level 4 penalty calculation in the ERP, the gross penalty for each of these counts is \$4,682.

Subtotal for Victoria Facility \$190,437

Initial Penalty Calculation

The table below summarizes the gross penalties at each facility.

City	Penalty
Damascus	\$85,482
Broussard	\$71,899
Hobbs	\$158,660
Beaumont	\$82,620
Bridgeport	\$92,572
Robstown	\$80,800
LaGrange	\$97,790
Laredo	\$311,944
Odessa	\$348,913
San Benito	\$69,148

Tyler	\$190,437
Victoria	\$109,562

Using the formulas described in the ERP and detailed above and in (CX 53), the initial calculated penalty is \$1,699,828.

Additional Considerations and Alternative Penalty Calculation

Complainant determined that the unique facts and circumstances of this case warranted additional consideration. *These considerations are based on the unique circumstances of this case and do not apply to or otherwise affect the calculation of penalties in any other matter.*

As stated above and in Respondent's Initial Prehearing Exchange, Complainant considers Respondent to have been fully cooperative with EPA's investigation, and also considers Respondent to have made good faith efforts to comply, both on its own initiative for some of the 2013 reporting requirements and then after prompted by EPA on previous years. As such EPA considers a reduction in this calculated penalty amount appropriate.

Complainant proposes a penalty of \$1,189,879, which it believes is proportionate to the totality of the circumstances and appropriately reflects the gravity of the violations.

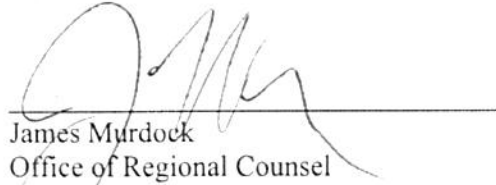
As stated above, Respondent has not raised the prospect of an inability to pay a potential penalty, or the prospect that a penalty may endanger its ability to continue to do business.

Complainant, as always, is open to considering such information and reserves the right to amend its proposed penalty amount upon receipt.

DATED: March 24, 2020

Respectfully submitted,

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 6

A handwritten signature in black ink, appearing to read 'James Murdock', is written over a horizontal line.

James Murdock
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ATTORNEY FOR COMPLAINANT

Certificate of Service
Complainant's Exhibit 53

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March 2020, the foregoing Rebuttal Prehearing Exchange and its accompanying attachment were sent this day by the following means:

A handwritten signature in black ink, appearing to be 'J Mc', written over a horizontal line.

Electronic Filing

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OVERALL CIVIL ADMINISTRATIVE PENALTY CALCULATION

TRIFID	Facility Name	City	State	2012	2013	Penalty
7203WTHMSP1894H	Thomas Petroleum LLC Arkansas	Damascus	AR	9	2	\$85,482
7051WTHMSP136PE	Thomas Petroleum LLC Lafayette	Broussard	LA	4	5	\$71,899
8824WTHMSP337WC	Thomas Petroleum LLC Hobbs	Hobbs	NM	8	1	\$158,660
7770WTHMSP1173W	Thomas Petroleum LLC Beaumont	Beaumont	TX	8	8	\$79,383
7642WTHMSP179CR	Thomas Petroleum LLC Bridgeport	Bridgeport	TX	10	2	\$92,572
7838WTHMSP4632D	Thomas Petroleum LLC Corpus/Robstown	Robstown	TX	9	1	\$80,800
7894WTHMSP45AIR	Thomas Petroleum LLC LaGrange	LaGrange	TX	9	1	\$97,790
7804WTHMSP13497	Thomas Petroleum LLC Laredo	Laredo	TX	10	2	\$311,944
7976WTHMSP1918W	Thomas Petroleum LLC Odessa	Odessa	TX	10	2	\$348,913
7858WTHMSP25UTE	Thomas Petroleum LLC San Benito	San Benito	TX	7	6	\$69,148
7570WTHMSP151NR	Thomas Petroleum LLC Tyler	Tyler	TX	7	2	\$190,437
7790WTHMSP971US	Thomas Petroleum LLC Victoria	Victoria	TX	10	2	\$109,562

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Total revised penalty for all 12 facilities = \$1,696,590

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Arkansas
1894 Hwy 124, Damascus, AR 72039

TRIFID: 7203WTHMSP1894H

Calendar Year 2012		>10x			>\$10M		(Using 2008 → matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	112,582	p	n	n	y	C	1	\$7,090
diethanolamine	44,760	p	n	n	y	C	1	\$7,090
ethylene glycol	186,112	p	n	n	y	C	1	\$7,090
methanol	284,605	p	y	n	y	B	1	\$24,080
n-hexane	111,172	p	n	n	y	C	1	\$7,090
naphthalene	61,045	p	n	n	y	C	1	\$7,090
PACs ^a	134	p	n	n	y	C	1	\$7,090
xylene (mixed isomers)	87,816	p	n	n	y	C	1	\$7,090
zinc compounds	45,239	p	n	n	y	C	1	\$7,090
*** All forms submitted 10/22/14 (>1 year late)								Total = \$80,800

Calendar Year 2013		>10x			>\$10M		(Using 2008 → matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty
diethanolamine	31,580	p	n	n	y	C	-	\$4,682.19
*** Form for this chemical was submitted in 2015, on 1/28 (211 days late)								Total = \$4,682

Grand total = \$85,482

a = The PACs category is a PBT chemical with a threshold of 100 lbs.
2014 forms were submitted on-time: 6/26/15
2013 per day calculation for diethanolamine: LEVEL C - LATE REPORTING
C4 penalty + (# days late* - 1)(C1penalty - C4 penalty) 365 days
* Form submitted 1/28/15
C4 = 1,420
C1 = 7,090 # days past 7/1/14 = 211
2013 per day calculation for naphthalene: LEVEL C - LATE REPORTING
C4 penalty + (# days late* - 1)(C1penalty - C4 penalty) 365 days
* Form submitted 1/12/15
C4 = 1,420
C1 = 7,090 # days past 7/1/14 = 195
Refer to Attachment 8 of the Audit Report for 2010 - 2012 usage information, and to Attachment 29 and "2016-01-14 Letter to D Riley.pdf" for 2013 usage information.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Lafayette (aka "Broussard") TRIFID: 7051WTHMSP136PE
 1306 Petroleum Parkway, Broussard, LA 70518

Calendar Year 2012		>10x			>\$10M		(Using 2008→ matrix)		
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty	
1,2,4-trimethylbenzene	29,437	p	n	n	y	C	1	\$7,090	
ethylene glycol	260,051	p	y	n	y	B	1	\$24,080	
methanol	132,033	p	n	n	y	C	1	\$7,090	
zinc compounds	62,771	p	n	n	y	C	1	\$7,090	
*** All forms submitted 10/28/14 (>1 year late)								Total =	\$45,350

Calendar Year 2013		>10x			>\$10M		(Using 2008→ matrix)		
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty	
1,2,4-trimethylbenzene	30,762	p	n	n	y	C	-	\$3,253.04	
ethylene glycol	297,418	p	y	n	y	B	-	\$13,536.82	
methanol	89,892	p	n	n	y	C	-	\$3,253.04	
n-hexane	26,017	p	n	n	y	C	-	\$3,253.04	
zinc compounds	51,399	p	n	n	y	C	-	\$3,253.04	
*** All forms submitted 10/28/14 (119 days late)								Total =	\$26,549

2013 per day calculation: LEVEL B - LATE REPORTING	
B4 penalty + (# days late* - 1)(B1penalty - B4 penalty)	
365 days	* Form submitted 10/28/14
B4 = 8,500	
B1 = 24,080	# days past 7/1/14 = 119
2013 per day calculation: LEVEL C - LATE REPORTING	
C4 penalty + (# days late* - 1)(C1penalty - C4 penalty)	
365 days	* Form submitted 10/28/14
C4 = 1,420	
C1 = 7,090	# days past 7/1/14 = 119
Refer to Attachment 9 of the Audit Report for 2010 - 2013 usage information.	

Grand total = \$71,899

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Hobbs
3307 W. County Road, Hobbs, NM 88240

TRIFID: 8824WTHMSP337WC

Calendar Year 2012								(Using 2008→ matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold ?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	1,035,721	p	y	n	y	B	1	\$24,080
ethylene glycol	73,600	p	n	n	y	C	1	\$7,090
methanol	268,303	p	y	n	y	B	1	\$24,080
n-hexane	1,031,308	p	y	n	y	B	1	\$24,080
naphthalene	566,907	p	y	n	y	B	1	\$24,080
PACs ^a	1,071	p	y	n	y	B	1	\$24,080
xylene (mixed isomers)	559,492	p	y	n	y	B	1	\$24,080
zinc compounds	74,728	p	n	n	y	C	1	\$7,090
*** All forms submitted 10/22/14 (>1 year late)								Total = \$158,660

a = The PACs category is a PBT chemical with a threshold of 100 lbs.			
2013 per day calculation for naphthalene: LEVEL B - LATE REPORTING			
B4 penalty + (# days late* - 1)(B1penalty - B4 penalty)			
365 days			
* Form submitted 1/12/15			
B4 =	8,500		
B1 =	24,080	# days past 7/1/14 =	195
Refer to Attachment 10 of the Audit Report for 2010 - 2012 usage information, and to Attachment 29 for 2013 usage information.			

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CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Beaumont
11703 West Port Arthur Road, Beaumont, TX 77705

TRIFID: 7770WTHMSP1173W

Calendar Year 2012		>10x			>\$10M		(Using 2008 → matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	70,047	p	n	n	y	C	1	\$7,090
ethylene glycol	111,263	p	n	n	y	C	1	\$7,090
methanol	90,176	p	n	n	y	C	1	\$7,090
n-hexane	55,418	p	n	n	y	C	1	\$7,090
naphthalene	31,004	p	n	n	y	C	1	\$7,090
toluene	38,783	p	n	n	y	C	1	\$7,090
xylene (mixed isomers)	38,558	p	n	n	y	C	1	\$7,090
zinc compounds	28,164	p	n	n	y	C	1	\$7,090
*** All forms submitted 10/27/14 (>1 year late)								Total = \$56,720

Calendar Year 2013		>10x			>\$10M		(Using 2008 → matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	66,935	p	n	n	y	C	-	\$3,237.51
ethylene glycol	31,648	p	n	n	y	C	-	\$3,237.51
methanol	46,081	p	n	n	y	C	-	\$3,237.51
n-hexane	59,736	p	n	n	y	C	-	\$3,237.51
naphthalene	32,602	p	n	n	y	C	-	\$3,237.51
toluene	29,431	p	n	n	y	C	-	\$3,237.51
xylene (mixed isomers)	29,260	p	n	n	y	C	-	\$3,237.51
zinc compounds	32,205	p	n	n	y	C	-	\$3,237.51
*** All forms submitted 10/27/14 (118 days late)								Total = \$25,900

Grand total = \$82,620

a = The PACs category is a PBT chemical with a threshold of 100 lbs.
Original 2013 usage calculations for Beaumont, submitted on 10/27/14, used the correct de minimis of 0.1% for naphthalene. Their other facilities that reported on-time for 2013 used a de minimis of 1%.
2013 per day calculation for all: LEVEL C - LATE REPORTING
C4 penalty + (# days late* - 1)(C1penalty - C4 penalty)
365 days
* Form submitted 10/27/14
C4 = 1,420
C1 = 7,090 # days past 7/1/14 = 118
Refer to Attachment 9 of the Audit Report for 2010 - 2012 usage information, and to Attachment 12 for 2013 usage information.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Bridgeport
1709 Crittendon, Bridgeport, TX 76426

TRIFID: 7642WTHMSP179CR

Calendar Year 2012								(Using 2008 → matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	79,375	p	n	n	y	C	1	\$7,090
diethanolamine	45,100	p	n	n	y	C	1	\$7,090
ethylene glycol	322,199	p	y	n	y	B	1	\$24,080
methanol	180,629	p	n	n	y	C	1	\$7,090
n-hexane	64,819	p	n	n	y	C	1	\$7,090
naphthalene	34,622	p	n	n	y	C	1	\$7,090
PACs ^a	103	p	n	n	y	C	1	\$7,090
toluene	69,987	p	n	n	y	C	1	\$7,090
xylene (mixed isomers)	69,579	p	n	n	y	C	1	\$7,090
zinc compounds	63,265	p	n	n	y	C	1	\$7,090
*** All forms submitted 10/22/14 (>1 year late)								
Total =								\$87,890

Calendar Year 2013								(Using 2008 → matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty
diethanolamine	136,520	p	n	n	y	C	-	\$4,682.19
*** Form for this chemical was submitted in 2015, on 1/28 (211 days late)								
Total =								\$4,682

Grand total = \$92,572

a = The PACs category is a PBT chemical with a threshold of 100 lbs.
2013 per day calculation for diethanolamine: LEVEL C - LATE REPORTING
C4 penalty + (# days late - 1)(C1 penalty - C4 penalty)
365 days
* Form submitted 1/28/15
C4 = 1,420
C1 = 7,090 # days past 7/1/14 = 211
Refer to Attachment 10 of the Audit Report for 2010 - 2012 usage information, and to Attachment 29 and "2016-01-14 Letter to D Riley.pdf" for 2013 usage information.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Corpus/Robstown
4632 Daniel, Robstown, TX 78380

TRIFID: 7838WTHMSP4632D

Calendar Year 2012		>10x			>\$10M		(Using 2008→ matrix)		
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty	
1,2,4-trimethylbenzene	168,592	p	n	n	y	C	1	\$7,090	
ethylene glycol	259,712	p	y	n	y	B	1	\$24,080	
methanol	111,190	p	n	n	y	C	1	\$7,090	
n-hexane	150,292	p	n	n	y	C	1	\$7,090	
naphthalene	81,368	p	n	n	y	C	1	\$7,090	
PACs ^a	225	p	n	n	y	C	1	\$7,090	
toluene	87,983	p	n	n	y	C	1	\$7,090	
xylene (mixed isomers)	87,470	p	n	n	y	C	1	\$7,090	
zinc compounds	132,461	p	n	n	y	C	1	\$7,090	
*** All forms submitted 10/22/14 (>1 year late)								Total =	\$80,800

a = The PACs category is a PBT chemical with a threshold of 100 lbs.

Refer to Attachment 10 of the Audit Report for 2010 - 2012 usage information, and to Attachment 29 for 2013 usage information.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC LaGrange
450 Airport Road, La Grange, TX 78945

TRIFID: 7894WTHMSP45AIR

Calendar Year 2012								(Using 2008 → matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold ?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	183,271	p	n	n	y	C	1	\$7,090
ethylene glycol	366,042	p	y	n	y	B	1	\$24,080
methanol	1,173,084	p	y	n	y	B	1	\$24,080
n-hexane	165,010	p	n	n	y	C	1	\$7,090
naphthalene	89,747	p	n	n	y	C	1	\$7,090
PACs ^a	201	p	n	n	y	C	1	\$7,090
toluene	82,094	p	n	n	y	C	1	\$7,090
xylene (mixed isomers)	81,646	p	n	n	y	C	1	\$7,090
zinc compounds	55,394	p	n	n	y	C	1	\$7,090
*** All forms submitted 10/25/14 (>1 year late)								Total = \$97,790

a = The PACs category is a PBT chemical with a threshold of 100 lbs.

2013 per day calculation for naphthalene: LEVEL C - LATE REPORTING

$$C4 \text{ penalty} + \frac{(\# \text{ days late} - 1)(C1 \text{ penalty} - C4 \text{ penalty})}{365 \text{ days}}$$

* Form submitted 1/12/15

C4 = 1,420

C1 = 7,090 # days past 7/1/14 = 195

Refer to Attachment 11 of the Audit Report for 2010 - 2012 usage information, and to Attachment 29 for 2013 usage information.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Laredo
13497 Port Drive, Laredo, TX 78041

TRIFID: 7804WTHMSP13497

Calendar Year 2012									(Using 2008--> matrix)
Name(s) of Chemical(s)	Annual Usage (lbs) ^b	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty	
1,2,4-trimethylbenzene	481,062	p	y	y	y	A	1	\$37,500	
diethanolamine	89,820	p	n	y	y	B	1	\$24,080	
ethylene glycol	383,566	p	y	y	y	A	1	\$37,500	
methanol	95,007	p	n	y	y	B	1	\$24,080	
n-hexane	472,024	p	y	y	y	A	1	\$37,500	
naphthalene	258,975	p	y	y	y	A	1	\$37,500	
PACs ^a	513	p	n	y	y	B	1	\$24,080	
toluene ^b	43,454	p	n	y	y	B	1	\$24,080	
xylene ^b	43,200	p	n	y	y	B	1	\$24,080	
zinc compounds	74,605	p	n	y	y	B	1	\$24,080	
*** All forms submitted 10/28/14 (>1 year late)									Total = \$294,480

Calendar Year 2013									(Using 2008--> matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty	
diethanolamine	44,900	p	n	y	y	B	-	\$17,463.84	
*** Form for this chemical was submitted in 2015, on 1/28 (211 days late)									Total = \$17,464

Grand total = \$311,944

a = The PACs category is a PBT chemical with a threshold of 100 lbs.

b = Initial usage calculations showed that toluene was processed at an amount below the 25,000 lb threshold for reporting; however, the facility submitted a Form A due to a report being submitted for the prior year. Upon further investigation, the facility found that it had accidentally halved its gasoline sales for this facility/year, so toluene was actually over threshold, as was xylene. This recalculation also led to revisions for its PACs releases for that year. Numbers were not provided, but I have recalculated usage for all chemicals for 2012 based on this information.

2013 per day calculation for diethanolamine: LEVEL B - LATE REPORTING

B4 penalty = (# days late - 1)(B1 penalty - B4 penalty)
365 days

B4 = 8,500 * Form submitted 1/28/15
B1 = 24,080 # days past 7/1/14 = 211

Refer to Attachment 12 of the Audit Report for 2010 - 2012 usage information, and to Attachment 29 and "2016-01-14 Letter to D Riley.pdf" for 2013 usage information.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Odessa (aka "Permian")
10918 W. I-20 E, Odessa, TX 79763

TRIFID: 7976WTHMSP1918W

Calendar Year 2012								(Using 2008 → matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty	
1,2,4-trimethylbenzene	308,993	p	y	y	y	A	1	\$37,500	
diethanolamine	458,280	p	y	y	y	A	1	\$37,500	
ethylene glycol	1,532,904	p	y	y	y	A	1	\$37,500	
methanol	402,270	p	y	y	y	A	1	\$37,500	
n-hexane	281,058	p	y	y	y	A	1	\$37,500	
naphthalene	156,690	p	n	y	y	B	1	\$24,080	
PACs ^a	347	p	n	y	y	B	1	\$24,080	
toluene	51,615	p	n	y	y	B	1	\$24,080	
xylylene (mixed isomers)	664,137	p	y	y	y	A	1	\$37,500	
zinc compounds	121,566	p	n	y	y	B	1	\$24,080	
*** All forms submitted 10/28/14 (>1 year late)								Total = \$321,320	

Calendar Year 2013								(Using 2008 → matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty	
diethanolamine	463,960	p	y	y	y	A	-	\$27,592.74	
*** Form for this chemical was submitted in 2015, on 1/28 (211 days late)								Total = \$27,593	

Grand total = \$348,913

a = The PACs category is a PBT chemical with a threshold of 100 lbs.
2013 per day calculation for diethanolamine: LEVEL A - LATE REPORTING
A4 penalty + (# days late - 1)(A1 penalty - A4 penalty)
365 days
* Form submitted 1/28/15
A4 = 14,170
A1 = 37,500
days past 7/1/14 = 211
2013 per day calculation for naphthalene: LEVEL A - LATE REPORTING
A4 penalty + (# days late - 1)(A1 penalty - A4 penalty)
365 days
* Form submitted 1/12/15
A4 = 14,170
A1 = 37,500
days past 7/1/14 = 195
Refer to Attachment 12 of the Audit Report for 2010 - 2012 usage information, and to Attachment 29 and "2016-01-14 Letter to D Riley.pdf" for 2013 usage information.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC San Benito
2050 Utex, San Benito, TX 78586

TRIFID: 7858WTHMSP25UTE

Calendar Year 2012		>10x			>\$10M		(Using 2008--> matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	77,421	p	n	n	y	C	1	\$7,090
ethylene glycol	110,363	p	n	n	y	C	1	\$7,090
n-hexane	54,939	p	n	n	y	C	1	\$7,090
naphthalene	29,221	p	n	n	y	C	1	\$7,090
toluene	96,072	p	n	n	y	C	1	\$7,090
xylene (mixed isomers)	95,512	p	n	n	y	C	1	\$7,090
zinc compounds	42,120	p	n	n	y	C	1	\$7,090
*** All forms submitted 10/28/14 (>1 year late)								Total = \$49,630

Calendar Year 2013		>10x			>\$10M		(Using 2008--> matrix)	
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	43,798	p	n	n	y	C	-	\$3,253.04
ethylene glycol	111,879	p	n	n	y	C	-	\$3,253.04
n-hexane	32,580	p	n	n	y	C	-	\$3,253.04
toluene	48,398	p	n	n	y	C	-	\$3,253.04
xylene (mixed isomers)	48,116	p	n	n	y	C	-	\$3,253.04
zinc compounds	37,286	p	n	n	y	C	-	\$3,253.04
*** All forms submitted 10/28/14 (119 days late)								Total = \$19,518

Grand total = \$69,148

a = The PACs category is a PBT chemical with a threshold of 100 lbs.	
b = p-xylene for 2010 was submitted in error. It was withdrawn on the same day (10/28/14).	
2013 per day calculation: LEVEL C - LATE REPORTING	
C4 penalty + (# days late* - 1)(C1penalty - C4 penalty)	
	365 days
	* Form submitted 10/28/14
C4 =	1,420
C1 =	7,090
	# days past 7/1/14 = 119
Refer to Attachment 27 of the Audit Report for 2010 - 2013 usage information.	

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Tyler
1510 N. NE Loop 323, Tyler, TX 75708

TRIFID: 7570WTHMSP151NR

Calendar Year 2012		<u>>10x</u>			<u>>\$10M</u>				(Using 2008→ matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level		Penalty
1,2,4-trimethylbenzene	93,417	p	n	y	y	B	1		\$24,080
diethanolamine	44,760	p	n	y	y	B	1		\$24,080
methanol	1,555,508	p	y	y	y	A	1		\$37,500
n-hexane	91,295	p	n	y	y	B	1		\$24,080
naphthalene	50,062	p	n	y	y	B	1		\$24,080
PACs ^a	146	p	n	y	y	B	1		\$24,080
zinc compounds	108,008	p	n	y	y	B	1		\$24,080
*** All forms submitted 10/3/14 (>1 year late)									Total = \$181,980

Calendar Year 2013		<u>>10x</u>			<u>>\$10M</u>				(Using 2008→ matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	Threshold ?	>50 Employees?	Annual Sales?	Extent Level	Circumstance Level		Penalty
diethanolamine	108,900	p	n	y	y	B	-		\$8,457
methanol	1,335,886	p	-	-	-	-	-		-
PACs ^a	133	p	-	-	-	-	-		-
*** Forms for diethanolamine and naphthalene were submitted on 10/3/14 (94 days late)									
*** Forms for other chemicals were submitted on-time: 6/29/14									
*** Methanol and PACs were revised on 10/3/14.									Total = \$8,457

Grand total = \$190,437

a = The PACs category is a PBT chemical with a threshold of 100 lbs.

b = Diethanolamine was reported for 2011 despite its throughput being 0 lbs. As explained in "2016-01-14 Letter to D Riley.pdf", Thomas Petroleum considered the maximum amount on-site for reporting, which was 61,812 lbs (a full tank). There were no intercompany transfers. In this instance, a penalty has not been calculated.

2013 per day calculation for diethanolamine: LEVEL B-LATE REPORTING

B4 penalty + (# days late - 1)(B1 penalty - B4 penalty)

365 days

* Form submitted 10/3/14

B4 = 8,500

B1 = 24,080 # days past 7/1/14 = 94

Refer to Attachment 10 of the Tyler Inspection Report for finalized 2010 - 2013 usage information, as well as "2016-01-14 Letter to D Riley.pdf" for clarification on diethanolamine for 2011. Original usage info for 2013 is contained in Attachment 5 of the Tyler Inspection Report.

CIVIL ADMINISTRATIVE PENALTY CALCULATION

Name of facility: Thomas Petroleum LLC Victoria
9701 US Hwy 59 N, Victoria, TX 77905

TRIFID: 7790WTHMSP971US

Calendar Year 2012								(Using 2008 -> matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty
1,2,4-trimethylbenzene	95,650	p	n	n	y	C	1	\$7,090
diethanolamine	70,506 ^b	p	n	n	y	C	1	\$7,090
ethylene glycol	783,568	p	y	n	y	B	1	\$24,080
methanol	408,481	p	y	n	y	B	1	\$24,080
n-hexane	78,603	p	n	n	y	C	1	\$7,090
naphthalene	43,726	p	n	n	y	C	1	\$7,090
PACs ^a	160	p	n	n	y	C	1	\$7,090
toluene	47,535	p	n	n	y	C	1	\$7,090
xylene (mixed isomers)	47,258	p	n	n	y	C	1	\$7,090
zinc compounds	152,872	p	n	n	y	C	1	\$7,090
*** Form for diethanolamine submitted 1/28/15. Other forms submitted 10/25/14. (all >1 year late)								Total = \$104,880

Calendar Year 2013								(Using 2008 -> matrix)
Name(s) of Chemical(s)	Annual Usage (lbs)	How Used?	>10x Threshold?	>50 Employees?	>\$10M Annual Sales?	Extent Level	Circumstance Level	Penalty
diethanolamine	32,180 ^b	p	n	n	y	C	-	\$4,682.19
*** Form for this chemical was submitted in 2015, on 1/28 (211 days late)								

a = The PACs category is a PBT chemical with a threshold of 100 lbs.

b = According to correspondence of 2/9/15, sales of diethanolamine for 2012 were under processing threshold, but company indicated an intercompany transfer based on max. pounds on site. Also, no sales in 2013, but amount processed was intercompany transfer based on tank difference from 2012 to 2013. See Attachment 30 of Audit Report, as well as "2016-01-14 Letter to D Riley.pdf".

2013 per day calculation for diethanolamine: LEVEL C - LATE REPORTING

C4 penalty + (# days late - 1)(C1 penalty - C4 penalty)

365 days

* Form submitted 1/28/15

C4 = 1,420

C1 = 7,090 # days past 7/1/14 = 211

Refer to Attachment 30 of the Audit Report for finalized 2010 - 2013 usage information, including diethanolamine. Original usage info for 2010 - 2012 is contained in Attachment 11.

CIVIL ADMINISTRATIVE PENALTY LEVELS

<u>I. EXTENT LEVEL</u>			
Does the facility:			
Manufacture, process, or otherwise use \geq 10x threshold?		OR...	Manufacture, process, or otherwise use $<$ 10x threshold?
	<u>level</u>		<u>level</u>
\geq \$10M facility sales + \geq 50 employees	A		\geq \$10M facility sales + \geq 50 employees
\geq \$10M facility sales + $<$ 50 employees	B		\geq \$10M facility sales + $<$ 50 employees
$<$ \$10M facility sales + \geq 50 employees	B		$<$ \$10M facility sales + \geq 50 employees
$<$ \$10M facility sales + $<$ 50 employees	B		$<$ \$10M facility sales + $<$ 50 employees

<u>II. CIRCUMSTANCE LEVEL</u>
<p><u>Level I</u></p> <ul style="list-style-type: none"> • Failure to report in a timely manner - Category I
<p><u>Level II</u></p> <ul style="list-style-type: none"> • Failure to maintain records as prescribed at 40 CFR § 372.10 (a) or (b) • Failure to supply notification; per chemical per year
<p><u>Level III</u></p> <ul style="list-style-type: none"> • Data Quality Errors • Repeated NON violations
<p><u>Level IV</u></p> <ul style="list-style-type: none"> • 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)
<p><u>Level V</u></p> <ul style="list-style-type: none"> • Failure to respond to a 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
<p><u>Level VI</u></p> <ul style="list-style-type: none"> • 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, per 40 CFR § 372.10(c)