



Mike Dillinger  
Environmental Counsel

February 28, 2012

VIA UPS  
Regional Hearing Clerk (6RC-D)  
US EPA  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Regional Hearing Clerk:

Re: San Antonio Refinery Fire (202397)

Enclosed is the Request for Dismissal of Complaint or, If No Dismissal, Reduction of Proposed Penalty for the above mentioned matter.

Thank you,

*For Michael Dillinger/mvs*  
Michael Dillinger

MD/mvs

Enclosure:

CC: Mr. Jonathan Bull, Assistant Regional Counsel (6RC-ER)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
BEFORE THE ADMINISTRATOR

FILED  
2012 MAR -1 PM 12:30  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF:

NUSTAR REFINING, LLC

EPA DOCKET NO.  
CAA-06-2012-3444

BEXAR COUNTY, TEXAS

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ANSWER TO COMPLAINT AND  
NOTICE OF OPPORTUNITY FOR A HEARING

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I.

REQUEST FOR DISMISSAL OF COMPLAINT OR,  
IF NO DISMISSAL, REDUCTION OF PROPOSED PENALTY

Respondent, NuStar Refining, LLC, hereby answers the Complaint and respectfully requests the Environmental Protection Agency (EPA) exercise its discretion and dismiss this Complaint after considering the mitigating facts and circumstances described below. In the event EPA does not dismiss the Complaint, NuStar Refining, LLC respectfully submits that the mitigating facts and circumstances, under the statutory penalty factors in Clean Air Act (CAA) section 113(e)(1), 42 U.S.C. § 7413(e)(1), warrant a reduction of the proposed penalty to a de minimus amount. NuStar Refining, LLC does not request a formal hearing, but does request an informal conference.

II.

FACTS

NuStar Refining, LLC generally denies the facts as stated in the Complaint. However, NuStar Refining, LLC does admit it is a "person" under the CAA who has since April 2011 "owned and operated" the San Antonio Refinery located at 7811 South Presa Street in San Antonio, Texas; the refinery is a "stationary source" subject to the general duties enumerated in CAA section 112(r)(1); and a fire occurred in the refinery's crude unit on November 30, 2011 resulting in a shutdown of the crude unit, evacuation of non-essential personnel and response by the San Antonio Fire Department. NuStar

Refining, LLC also provides additional facts or factual explanations in Sections III and IV of this Answer for EPA's consideration.

### III.

#### DISMISSAL OF COMPLAINT

NuStar Refining, LLC, respectfully requests EPA exercise its discretion and dismiss this CAA General Duty allegation for the reasons set forth below. The General Duty clause in CAA section 112(r)(1) states:

(r) Prevention of Accidental Releases

(1) Purpose and General Duty - It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

First, contrary to Complaint paragraph 24, the San Antonio Refinery is a safe facility and NuStar Refining, LLC has taken the steps necessary to identify hazards that may result from such releases using appropriate hazard recognition techniques and to prevent releases of extremely hazardous substances. Specifically, since it acquired the refinery out of bankruptcy in April 2011, NuStar Refining, LLC has taken significant steps to ensure the refinery's work authorization and permit; lock out/tag out; energy isolation; hazard recognition; and other health, safety and environmental programs, procedures and training all meet or exceed regulatory and industry standards. Furthermore, the work being done on the pipe in this case was being accomplished to enhance safety and the crude unit's environmental performance. However, human error in applying those procedures resulted in the release. Recognition of this possibility is why the General Duty clause includes a requirement for facilities to minimize the consequences of accidental releases that do occur.

Second, contrary to Complaint paragraph 27, NuStar Refining, LLC minimized the consequences of the release. Prior to the incident, as stated in the above paragraph, NuStar Refining, LLC had taken significant steps to ensure the refinery's programs, procedures and training all met or exceeded regulatory and industry standards. This includes the protective equipment; fire response; and emergency response programs. NuStar Refining, LLC also minimized the consequences during and after the release. NuStar Refining, LLC operators immediately sounded the emergency horn and were able to shut down the pump and close the pump's discharge valve pump prior to the jet fuel flashing. The only reason NuStar Refining, LLC operators could not close the suction valve was due to the release physically blocking access to the valve. NuStar Refining, LLC immediately initiated its emergency response procedures, including all required notifications to Federal, State, and local agencies. In conjunction with making the regulatory notifications, NuStar Refining, LLC notified the facility's emergency response contractors. In an abundance of caution, NuStar Refining, LLC evacuated all non-essential personnel quickly and orderly. NuStar Refining, LLC's fire control actions and coordination with local response personnel was praised by the San Antonio Fire Department. Further, due in large part to NuStar Refining, LLC's comprehensive minimization efforts, the air emissions related to the incident were below the Reportable Quantity (RQ). Finally, NuStar Refining, LLC followed up with the contractor, who received a quarter-sized sunburn on his cheek, to ensure he did not need any additional treatment. He did not.

#### IV.

#### REDUCTION OF PROPOSED PENALTY

In the event EPA does not dismiss the Complaint, NuStar Refining, LLC respectfully requests EPA consider the mitigating facts and circumstances under the statutory penalty factors in Clean Air Act section 113(e)(1), 42 U.S.C. § 7413(e)(1), and reduce the penalty to a de minimus amount. Under these factors, NuStar Refining, LLC requests EPA specifically consider NuStar Refining LLC's 1) lack of previous noncompliance and good faith efforts to comply, 2) significant and prompt implementation of programmatic compliance at a facility acquired out of bankruptcy in April 2011, 3) immediate and

competent emergency response to the fire resulting in a minimal duration of the incident and avoidance or significant minimization of environmental effect including keeping any air emissions below the RQ, 4) the only injury was analogous to a sunburn the size of a quarter and the person was released to return to full work the same day, 5) cooperation, 6) efforts to ensure a similar incident will not occur again, 7) lack of economic benefit from the alleged noncompliance, and 8) all the other mitigating facts and circumstances.

V.

#### CONCLUSION

For the reasons stated above, Respondent, NuStar Refining, LLC, respectfully requests EPA exercise its discretion and dismiss this complaint after considering the above facts and circumstances. In the event EPA does not dismiss this Complaint, NuStar Refining, LLC respectfully requests the EPA apply the factors specified in Clean Air Act section 113(e)(1), 42 U.S.C. § 7413(e)(1), and reduce the penalty to a de minimus amount.

Dated this 27<sup>th</sup> day of February, 2012

Respectfully submitted,



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