

IN THE MATTER OF:)	
)	
BASF Catalysts, LLC)	EPCRA-04-2009-2001
)	
Respondent.)	

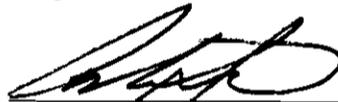
JOINT STATEMENT BY COMPLAINANT AND RESPONDENT IDENTIFYING THOSE ISSUES WHICH REMAIN GENUINELY IN DISPUTE

Having completed the prehearing exchanges for the above captioned matter, the parties hereto have conferred for the purpose of determining those issues which remain genuinely in dispute. The parties now submit this joint statement to the Court identifying those issues.

The parties agree that Respondent is liable for the violations alleged in Counts I through III of the Complaint, and as such, liability is not at issue in this matter. The parties further agree that the appropriateness of Complainant's proposed penalty remains genuinely in dispute. Respondent contends that the penalty for the violations should be fully mitigated pursuant to EPA's Audit Policy and that EPA's April 10, 2007, inspection does not preclude the application of said Policy to this litigated penalty assessment. EPA's position is that the proposed penalty is appropriate. EPA further contends that application of EPA's Audit Policy is a matter of the Agency's enforcement discretion and not an issue properly applied to litigated penalty assessments.

Dated April 28, 2009

Respectfully Submitted,



Adam Dilts, Assistant Regional Counsel
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and



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I also certify that, on the date indicated below, I sent by Certified Mail, return receipt requested, one copy of the above STATEMENT to the following addressee:

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

A copy of the executed STATEMENT was sent via electronic mail to:

Nancy Lake Martin
Senior Counsel
BASF Catalysts LLC
Nancy.martin@basf.com

4/28/09
Date


Adam Dilts, Assistant Regional Counsel
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