



The Chemical Company

*Via Federal Express*

October 31, 2008

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

RE: BASF Catalysts LLC Answer and Request for Evidentiary Hearing  
Docket No. EPCRA-04-2009-2001

Dear Sir or Madam:

Enclosed please find for filing an original and one copy of the Answer and Request for Evidentiary Hearing of BASF Catalysts LLC in the above matter.

Sincerely,

Nancy Lake Martin  
Senior Counsel

Cc: Mr. Adam Dilts

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HEARING CLERK

IN THE MATTER OF:	)	ANSWER AND REQUEST FOR
	)	HEARING
	)	
BASF Catalysts LLC	)	
	)	EPCRA-04-2009-2001
Respondent.	)	
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**BASF CATALYSTS LLC’S ANSWER AND REQUEST FOR EVIDENTIARY HEARING**

BASF Catalysts LLC (“Respondent”) files this Answer and Request for Evidentiary Hearing in response to the United States Environmental Protection Agency’s Complaint and Notice of Opportunity to Request a Hearing, and admits, denies and alleges as follows:

**PRELIMINARY STATEMENT**

1. Respondent denies that it is organized under the laws of New Jersey but admits the remainder of the allegations in paragraph 1.
2. Respondent admits the allegations in paragraph 2.
3. Respondent admits the allegations in paragraph 3.
4. Respondent admits the allegations in paragraph 4.
5. Respondent admits the allegations in paragraph 5.
6. The allegations in paragraph 6 state conclusions of law to which no response is necessary.
7. Respondent admits that an EPA inspector was present at the Savannah facility on April 10, 2007, however Respondent is without knowledge or information sufficient to form a belief as to the remainder of the allegations in paragraph 7.
8. Respondent admits the allegations in paragraph 8.
9. Respondent denies that its SIC Code is 3339, but admits the remainder of the allegations in paragraph 9.
10. Respondent admits the allegations in paragraph 10.
11. Respondent admits the allegations in paragraph 11.
12. Respondent incorporates by reference each of its responses to paragraphs 1 -11 above as if fully set forth in the following responses to Counts I – II below.

COUNT I

13. Respondent admits the allegations in paragraph 13.
14. Respondent admits the allegations in paragraph 14.
15. Respondent admits the allegations in paragraph 15.

COUNT II

16. Respondent admits the allegations in paragraph 16.
17. Respondent admits the allegations in paragraph 17.
18. Respondent admits the allegations in paragraph 18.

COUNT III

19. Respondent admits the allegations in paragraph 19.
20. Respondent admits the allegations in paragraph 20.
21. Respondent admits the allegations in paragraph 21.

AFFIRMATIVE DEFENSES

22. On May 16, 2007, during its preparation of the EPCRA 313 report for the Savannah facility for reporting year 2006, Respondent discovered that nitric acid had not been reported for reporting years 2003, 2004 and 2005. On June 5, 2007 Respondent disclosed this fact to EPA under its policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations", commonly referred to as the "Audit Policy". Thereafter, on July 13, 2007, Respondent submitted to EPA a full disclosure under the Audit Policy describing how it met each of the Policy's nine conditions. In addition, Respondent timely submitted a Form A for nitric acid for reporting years 2003, 2004 and 2005 within 60 days of its discovery.

23. On October 29, 2007, EPA denied Respondent's claim for relief under the Audit Policy solely on the basis that Respondent's discovery occurred after EPA's inspection of the Savannah facility on April 10, 2007. EPA claimed therefore that Respondent failed to satisfy the Policy condition of independent discovery and disclosure.

24. Respondent's May 16, 2007 discovery that nitric acid had not been reported for reporting years 2003, 2004 and 2005 was made completely independently of EPA's inspection on April 10, 2007. Respondent had an internal deadline for preparation of the 2006 EPCRA 313 report of June 1, 2007. Respondent's efforts that led to the May 16, 2007 discovery were undertaken in accordance with its routine preparation of a required submittal.

25. EPA did not independently discover, either during or subsequent to its April 10, 2007 inspection, that nitric acid had not been reported for reporting years 2003, 2004 and 2005. Rather, EPA claims that it “would have” discovered the reporting oversight had Respondent not found the error itself and self-disclosed under the Audit Policy. Yet in the almost two-month period between the inspection on April 10, 2007 and Respondent’s disclosure under the Audit Policy on June 5, 2007, there is no indication that EPA suspected that there was a problem with Respondent’s past reporting practices or that EPA’s inspection was ongoing.

26. EPA’s position is contrary to the intent of the Audit Policy to encourage regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of Federal environmental requirements.

27. Respondent is entitled to complete mitigation of the proposed penalty due to its voluntary discovery and disclosure to EPA of the failure to submit a Form A for nitric acid for reporting years 2003, 2004 and 2005, which disclosure meets all nine of the requisite Audit Policy conditions.

REQUEST FOR HEARING

28. Respondent hereby requests that an evidentiary hearing be held on the allegations and proposed penalty contained in the Complaint.

For the above reasons, Respondent prays that the Complaint be withdrawn and that no penalty be assessed.

Respectfully submitted,

By: Nancy Lake Martin  
Nancy Lake Martin  
Senior Counsel  
BASF Catalysts LLC  
100 Campus Drive  
Florham Park, NJ 07932  
(973) 245-6055  
(973) 245-6706 (facsimile)

CERTIFICATE OF SERVICE

I certify that, on the date indicated below, I sent by Federal Express overnight mail, a copy of the Answer and Request for Evidentiary Hearing to the following addressees:

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

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

10/31/08  
Date

Nancy Lake Martin  
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