ENFORCEMENT RESPONSE POLICY FOR SECTIONS 304, 311 AND 312 OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT AND SECTION 103 OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT

Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

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APPENDIX I: PENALTY CALCULATION WORKSHEET

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I. INTRODUCTION

In June 1990, the United States Environmental Protection Agency (EPA or the Agency) issued a Final Penalty Policy for addressing violations of §§ 302, 303, 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and § 103 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). The Superfund Amendments and Reauthorization Act of 1986 (SARA) created EPCRA, and also amended the enforcement provision for violations of CERCLA § 103. This revised policy supersedes the June 1990 penalty policy and the January 1998 Interim Final Enforcement Response Policy, but does not supersede any other Agency policies in effect at the time of the violation or settlement.

This Enforcement Response Policy (ERP or the Policy) is effective immediately and will assist staff in calculating proposed penalties for all civil administrative actions, and for settling actions concerning EPCRA §§ 304, 311 and 312 and CERCLA § 103(a) issued after the date of this Policy, regardless of the date of the violation.[1] Although the application of this Policy is intended for typical cases, there may be circumstances that warrant deviation from the Policy.[2] The policies and procedures set forth herein are intended solely for the guidance of employees of the EPA. They are not intended to, nor do they, constitute a rulemaking by the EPA. They may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency reserves the right to act at variance with this Policy and to change it at any time without public notice.

The purpose of this Policy is to ensure that enforcement actions for violations of CERCLA § 103(a) and EPCRA §§ 304, 311 and 312 are legally justifiable, uniform and consistent; that the enforcement response is appropriate for the violations committed; and that persons will be deterred from committing such violations in the future.

This Policy may be used to develop internal negotiation penalty figures for civil judicial enforcement actions. This Policy does not constitute a statement of EPA policy regarding the prosecution of criminal violations of CERCLA § 103(a) and EPCRA § 304.

EPCRA § 313 is currently covered by the *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)*, dated August 10, 1992.

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[1]EPA reserves its right to propose statutory maximum penalties.

[2]Any deviation from this Policy should be documented in the case file.

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II. SUMMARY OF STATUTORY REQUIREMENTS & AUTHORITIES

A. Statutory Requirements

CERCLA § 103(a) requires the person in charge of a facility or vessel from which a CERCLA hazardous substance has been released in an amount that meets or exceeds its reportable quantity (RQ) to immediately notify the National Response Center (NRC) as soon as he/she has knowledge of the release. The regulations set forth at Section 302.8 of Title 40 of the Code of Federal Regulations provide for reduced reporting requirements for releases that are continuous and stable in quantity and rate. Failure by the person in charge of the facility or vessel to fully comply with all requirements of 40 C.F.R. § 302.8(c) subjects such person to all of the reporting requirements of CERCLA § 103 and EPCRA § 304.

EPCRA § 302 requires the owner or operator of a facility that has present any extremely hazardous substances (EHSs) in amounts that exceed the chemical-specific threshold planning quantity (TPQ) to notify the State Emergency Response Commission (SERC) that the facility is subject to the planning provisions of the Act. If a facility newly acquires an EHS in excess of the TPQ, or if there is a revision to the list of EHSs and the facility has present a substance on the revised list in excess of the TPQ, the owner or operator of the facility is required to notify the SERC and the Local Emergency Planning Committee (LEPC) within 60 days after such acquisition or revision that the facility is subject to the planning provisions of the Act. EPCRA § 325(a) authorizes the EPA to issue orders compelling compliance. The U.S. District Court for the district in which the facility is located has authority to enforce the order and assess penalties of up to $27,500 per violation per day. *Violations of this provision are not addressed in the Policy.*

EPCRA § 303(d) requires owners or operators subject to § 302 to provide the LEPC with the name of a person who will act as the facility emergency coordinator. Additionally, § 303(d)(3) requires the owner or operator to promptly supply information to the LEPC upon request. The scope of the information request encompasses anything necessary for developing and implementing the emergency plan. EPA is authorized to issue orders compelling compliance with § 303(d). The U.S. District Court for the district in which the facility is located has authority to enforce the order and assess penalties of up to $27,500 per violation per day. *Violations of this provision are not addressed in the Policy.*

EPCRA § 304(a) requires the owner or operator to notify immediately the appropriate governmental entities for any release that requires CERCLA notification and for releases of EPCRA § 302 EHSs. The notification must be given to the SERCs for all states likely to be affected by the release and to the community emergency coordinators for the LEPCs for all areas likely to be affected by the release. If the release occurs during transportation, or storage incident to such transportation, the notice requirement shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator and supplying the appropriate information.

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EPCRA § 304(c) requires any owner or operator who has had a release that is reportable under EPCRA § 304(a) to provide, as soon as practicable, a follow-up written notice (or notices) to the SERC and LEPC updating the information required under § 304(b).

EPCRA § 311 requires that the owner or operator of a facility who is required to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act (OSHA) of 1970 shall submit to the SERC, LEPC, and the fire department with jurisdiction over the facility a MSDS for each such chemical (or a list of such chemicals as described in that section) present at the facility in quantities equal to or greater than 10,000 pounds or the chemical-specific minimum threshold level established by the Administrator (whichever is lower). The submission(s) must be made within three (3) months after the owner or operator of a facility first becomes subject to OSHA's requirements for hazardous chemicals. If the hazardous chemical is a listed EHS under § 302, the threshold for reporting is 500 pounds or the chemical-specific threshold planning quantity, whichever is lower. A revised MSDS shall be provided within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a MSDS was previously submitted. In addition, if a facility changes its inventory and a chemical becomes subject to these reporting requirements, the facility must provide the MSDS to the SERC, LEPC, and fire department within 3 months.

EPCRA § 312 provides that the owner or operator of a facility required to prepare or have available a MSDS for a hazardous chemical under OSHA, shall submit **annually** (on March 1) to the SERC, LEPC, and the fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form which may either be aggregate information by hazard category (Tier I) or specific information by chemical (Tier II). The form must include information on all hazardous chemicals present at the facility during the previous calendar year in amounts that meet or exceed thresholds.

EPCRA § 322 states that, with regard to a hazardous chemical, an extremely hazardous substance, or toxic chemical, any person required under Sections 303, 311, or 312, of EPCRA to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification) if the requirements of EPCRA § 322(a)(2) are met. These requirements include trade secret claims. *Violations of this provision are not addressed in the Policy.*

EPCRA § 323 requires the owner/operator to submit chemical specific information to medical personnel in the event of a medical emergency and for preventative measures by local health professionals. *Violations of this provision are not addressed in the Policy.*

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B. Statutory Penalty Authorities

CERCLA § 109 (b)(1) authorizes the President to assess a Class II penalty of up to $25,000 per day for each day during which a violation of CERCLA § 103(a) continues. As a result of the Debt Collection Improvement Act of 1996 (DCIA), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69,360 (December 31, 1996), violations of § 103(a) which occur after January 30, 1997 will be subject to the new statutory maximum civil penalty of $27,500 per day for each day during which a violation continues.

For second or subsequent violations, CERCLA § 109(b)(1) authorizes EPA to assess a Class II penalty not to exceed $75,000 for each day in which the violation continues. As a result of the DCIA, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, second or subsequent violations of CERCLA § 103(a) which occur after January 30, 1997 will be subject to the new statutory maximum civil penalty of $82,500 per day for each day a violation continues. CERCLA § 109(b) states that Class II penalties shall be assessed, and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with the Administrative Procedures Act, 5 U.S.C. § 554 *et. seq.* The authority described above has since been delegated to the Regional Administrators through the EPA Administrator by EPA Delegation No. 14-31 dated September 13, 1987 and was updated on June 6, 1994.

EPCRA § 325 (b)(1) authorizes EPA to assess a Class I penalty of up to $25,000 per violation of any requirement of § 304. EPCRA § 325(b)(2) authorizes the Administrator to assess a Class II penalty for violations of § 304 in an amount not to exceed $25,000 for each day a violation continues. As a result of the DCIA, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, violations of § 304 which occur after January 30, 1997 will be subject to the new statutory maximum civil penalty of $27,500 per day for each day a violation continues.

For second or subsequent violations of § 304, EPCRA § 325(b)(2) authorizes EPA to assess a Class II penalty not to exceed $75,000 for each day in which the violation continues. As a result of the DCIA, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, second or subsequent violations of § 304 which occur after January 30, 1997 will be subject to the new statutory maximum civil penalty of $82,500 per day for each day a violation continues. Any civil penalty under § 325(b)(2) shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected under § 16 of the Toxic Substances Control Act (TSCA). TSCA § 16 mandates that EPA consider the same factors in assessing penalties that are laid out in EPCRA § 325(b)(1)(C) and includes the additional requirement for EPA to consider the effect on the ability to continue to do business. EPA interprets EPCRA § 325(b)(2) to mean that the Agency must follow the procedural aspects of TSCA § 16 (*i.e.*, using the Consolidated Rules of Practice codified at 40 C.F.R. Part 22) and consider TSCA § 16 statutory factors for assessing penalties, but not any specific

penalty policies developed by the Agency under TSCA § 16.

For violations of EPCRA §§ 311, 323(b), and 322(a)(2), EPCRA § 325(c)(2) provides that the violator is subject to a penalty in an amount not to exceed $10,000 per violation. As a result of the DCIA, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, violations of §§ 311, 323(b), and 322(a)(2) which occur after January 30, 1997 will be subject to the new statutory maximum civil penalty of $11,000. Section 325(c)(3) states that each day a violation of §§ 311, 323(b), and 322(a)(2) continues constitutes a separate violation.

For violations of EPCRA § 312, § 325(c)(1) states that any person who violates § 312 is liable for a penalty in an amount not to exceed $25,000 for each violation. As a result of the DCIA, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, violations of § 312 which occur after January 30, 1997 will be subject to the new statutory maximum civil penalty of $27,500. Section 325(c)(3) states that each day a violation of § 312 continues constitutes a separate violation.

The authority described above was delegated to the Regional Administrators by EPA Delegation No. 22-3 dated September 13, 1987. Delegation 22-3 was updated (22-3-A) by the Administrator on October 31, 1989 and June 6, 1994.

III. LEVELS OF ACTION

Levels of action include: (A) notices of noncompliance; (B) civil administrative penalties; (C) civil judicial referrals; and (D) criminal sanctions.

A. Notices of Noncompliance

A Civil Administrative Complaint is the appropriate response for violations of EPCRA §§ 304, 311, and 312 and CERCLA § 103, except where the facts and circumstances support the issuance of a Notice of Noncompliance (NON). If a NON is issued, the violator should be given thirty (30) days from the date of issuance to come into compliance, if necessary. Failure to correct any violation for which a NON is issued may be the basis for issuance of a civil administrative complaint.

Examples of facts and circumstances which support the issuance of a NON:

- First time violations[3] of CERCLA § 103(a) and EPCRA § 304(a) and (c), provided that: (1) no other EPCRA violations were simultaneously discovered; (2) an EHS was not released; and (3) the release was less than two (2) times the reportable quantity (RQ).

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[3] Although prior receipt of a NON does not constitute a prior history of violations for purposes of increasing the penalty, it does preclude a facility from receiving another NON.

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- First time violations of EPCRA § 311 or § 312, provided that: (1) no other CERCLA § 103(a) or EPCRA violations were simultaneously discovered; (2) fewer than five (5) chemicals were stored in quantities greater than the minimum threshold level; (3) the stored chemicals were in quantities less than five (5) times the minimum threshold level; and (4) none of the chemicals stored was an extremely hazardous substance.

- First time violations of EPCRA § 311 and § 312 where the facility has timely reported to two of the three reporting entities (SERC, LEPC, and fire department), and compliance with the third entity is needed.

B. Civil Administrative Complaints

See Section IV for the criteria for issuing a civil administrative complaint.

C. Civil Judicial Referrals

EPA, under EPCRA §§ 325(b)(3), 325(c)(4), 325 (d)(1)(B), and 325(e) 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.

D. Criminal Sanctions

Under CERCLA § 103(b)(3), any person who fails to notify the appropriate agency of the United States Government or who submits in such notification any information which such person knows to be false and misleading shall, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the U.S. Code or imprisoned for not more than three (3) years (or not more than five (5) years for a second or subsequent conviction), or both.

Under EPCRA § 325(b)(4), any person who knowingly and willfully fails to provide notice in accordance with EPCRA § 304, shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two (2) years, or both. In the case of a second or subsequent conviction, such person shall be fined not more than $50,000 or imprisoned for not more than five (5) years, or both.

EPCRA does not provide for criminal sanctions for violations of EPCRA §§ 302, 303, 311, 312, 322 or 323, however, it is a criminal offense to falsify information submitted to the U.S. Government. The knowing failure to file or provide information under EPCRA may be prosecuted as a concealment prohibited by 18 U.S.C. § 1001.

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IV. ELEMENTS OF THE CIVIL ADMINISTRATIVE PENALTY SYSTEM AND USE OF THE MATRIX

The success of EPCRA is attained primarily through voluntary, strict and comprehensive compliance with the Act and its regulations. Deviation from the reporting requirements weakens the expressed intent of the Act to allow communities to plan for and respond to chemical emergencies and to allow citizen guaranteed access to information on chemical hazards present in their community.

CERCLA § 109 and EPCRA § 325 authorize EPA to assess civil administrative penalties. Penalties are assessed through a Consent Order or Final Order. This Policy addresses the proposal of penalties by agency enforcement offices acting as complainant. Proposed penalties are to be determined in two stages.

First, a preliminary deterrence (base) penalty is calculated using the statutory factors that apply to the violation (nature, circumstances, extent, and gravity). The base penalty amounts are set forth in Tables I and II. The penalty amounts were established so that a worst-case scenario violation could result in the statutory maximum penalty being proposed.

After the base penalty is calculated, the statutory factors that apply to the violator are considered (ability to pay, prior history of violations, the degree of culpability, economic benefit or savings, and other matters as justice may require; *see* Section VIII). Together, the revised calculation will yield a proposed penalty amount that considers all the statutory factors and is appropriate for the violation.

Respondent's failure to provide notification to each point of compliance or submit required reports to each point of compliance is a separate violation. The term "points of compliance" refers to the specific entities designated to receive submissions and notices under CERCLA and EPCRA (*i.e.*, NRC, SERC, LEPC, and fire department).

V. DETERMINATION OF THE BASE PENALTY

Consider the following factors related to a violation when determining the base penalty:

A. The "Nature" of the violation;

B. The "Extent" of the violation;

C. The "Gravity" of the violation;

D. The "Circumstances" of the violation.

These factors are incorporated into one matrix for CERCLA § 103 and EPCRA

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§§ 304 and 312 violations, and another matrix for § 311 violations. Two matrices are used because of the difference in the statutory maximum penalty associated with the different violations. The two primary factors used to establish the penalty amount in the matrices (gravity and extent) are equally weighted. The base penalty can be calculated from the matrices in Tables I and II (pp. 20-23, *infra*).

A. Nature

For the purposes of the EPCRA and CERCLA § 103(a) reporting requirements, there are basically two categories of violations: emergency response violations and emergency preparedness/right-to-know violations. Nature describes the requirement violated, separated by the category of violation. In the context of this Policy, nature is used to determine which specific penalty guidelines should be used to determine appropriate matrix levels of extent and gravity. The types of violations addressed by this Policy include, but are not limited to:

1. *Emergency Response Violations*

Failure to immediately notify the National Response Center (NRC) as required under CERCLA § 103(a); Failure to provide all the information required by statute or implementing regulations.

Failure to immediately notify all affected State Emergency Response Commissions (SERCs) and the emergency response coordinators for all affected Local Emergency Planning Committees (LEPCs) as required under EPCRA § 304 (a) and (b); Failure to provide all the information required by statute or implementing regulations.

In the case of a transportation related incident, failure to immediately call 911, or in the absence of a 911 emergency telephone number, failure to call the operator and provide the appropriate information as required under § 304(a) and (b); Failure to provide all the information required by statute or implementing regulations.

Failure to submit a written follow-up report to all affected SERCs and the emergency response coordinators for all affected LEPCs as soon as practicable after the release as required under § 304(c); Failure to provide all the information required by statute or implementing regulations.

2. *Emergency Preparedness/Right-to-Know Violations*

Failure to provide a MSDS for each required hazardous chemical (or list of such chemicals that require MSDSs) to each of the following: the appropriate LEPC, the SERC, and the fire department with jurisdiction over the facility as

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required under § 311(a).

Failure to submit a MSDS to the LEPC upon request as required under EPCRA § 311(c).

Failure to submit (or incomplete submission of) an emergency and hazardous chemical inventory form to each of the following: the appropriate LEPC, the SERC, and the fire department with jurisdiction over the facility as required under EPCRA § 312.

Failure to provide information as described in EPCRA § 312(d) to a SERC, LEPC, or fire department upon request as required under § 312(e).

B. Extent

The timeliness of the required notifications and reports is a significant factor in determining the appropriateness of the penalty. Extent measures the deviation from this requirement in terms of timeliness of the notifications and submission of required reports.

1. *Emergency Response Violations*

In the event of a reportable release, notification of the proper authorities is required to occur immediately after the owner, operator or person in charge has knowledge of the release. Immediate notification allows federal, state, and local agencies to determine what level of government response is needed and with what urgency the response must take place. Measuring the seriousness of the violation by the delay in notification, rather than by the harm actually caused by the release, ensures that notification will serve its purpose of providing a mechanism whereby the public authorities are notified of every potentially hazardous release as soon as possible, leaving them to decide what response is necessary or feasible. The statutes and regulations, codified at 40 C.F.R. Parts 302 and 355, identify the information required to be reported in the event of an accidental release (*e.g.*, chemical identity, estimated quantity released, time/duration of the release, etc.). A delay in the notification, or incomplete notification, could seriously hamper federal and state response activities and pose serious threats to human health and the environment. Thus, the extent factor focuses on the notification and follow-up actions taken by the respondent, and the expediency with which those notifications occurred.

The statutes require that notification be made by the owner or operator or person in charge immediately after that person has knowledge of a release of an RQ or more of a hazardous substance or extremely hazardous substance. Notification by anyone other than the owner or operator or person in charge does not satisfy the obligation to report. Although this Policy does not define "immediate," it does establish guidelines to assist Agency personnel in determining whether or not an "immediate" standard was met. The "Legislative History of the

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Superfund Amendments and Reauthorization Act of 1986" (Volume 2, October 1990, pps. 600-01), states that ordinarily, delays in making the required notifications should not exceed 15 minutes after the person in charge has knowledge of the release. Immediate notification requires shorter delays whenever practicable.

The Agency views knowledge as both actual and constructive. Constructive knowledge neither indicates nor requires actual knowledge but means knowledge of such circumstances as would ordinarily lead upon investigation, in the exercise of reasonable diligence which a prudent person ought to exercise, to a knowledge of actual facts. The failure to know what could have been known in the exercise of due diligence amounts to knowledge in the eyes of the law. (*See, e.g.*, *In the Matter of Thoro Products Company*, Docket No. EPCRA VIII 90-04, Administrative Law Judge Decision, May 19, 1992, pp. 21-22.)

Extenuating circumstances may be considered in evaluating the immediate notification requirement, but should not be confused with poor emergency planning and/or facility internal operating procedures that include elaborate reporting systems which cause unnecessary delays. Examples of extenuating circumstances are: downed telephone lines, delays in field personnel getting to a radio or telephone to make an immediate notification (such as may occur in farm situations and construction sites) and delays that result when the owner or operator or person in charge is severely injured and no one else from the facility is at the location.

The levels identified below reflect the benefit of expeditious notification by discounting from the maximum statutory penalty for the timeliness of the notification.

LEVEL 1

CERCLA § 103: No immediate notification to the NRC within 2 hours after the person in charge had knowledge that a RQ of a substance was released.

EPCRA § 304(a): No immediate notification to the appropriate SERC(s) and/or LEPC(s) within 2 hours after the owner or operator had knowledge that a RQ of a substance was released. In the case of a transportation related incident, no immediate call to 911, or in the absence of a 911 emergency telephone number, the telephone operator, within 2 hours after knowledge of the release.

EPCRA § 304(c): Written follow-up emergency notice provided to the appropriate SERC(s) and LEPC(s) more than 14 calendar days following the release.

LEVEL 2

CERCLA § 103: No immediate notification to the NRC within 1 hour but less than 2 hours after the person in charge had knowledge that a RQ of a substance was

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released.

EPCRA § 304(a): No immediate notification to the appropriate SERC(s) and/or LEPC(s), or 911 or in the absence of a 911 emergency telephone number the telephone operator if a transportation related release, within 1 hour but less than 2 hours after the owner or operator had knowledge of the release.

EPCRA § 304(c): Written follow-up emergency notice provided to the appropriate SERC(s) and LEPC(s) more than 14 calendar days following the release, but prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, or the regulated entity's knowledge that the discovery of the violation by a regulatory agency or third party was imminent.

LEVEL 3

CERCLA § 103: Notification to the NRC within one hour, but after 15 minutes.

EPCRA § 304(a): Notification to the appropriate SERC(s) and/or LEPC(s) within one hour, but after 15 minutes. For a transportation related incident, a call to 911, or in the absence of a 911 emergency telephone number, the telephone operator, within one hour, but after than 15 minutes.

EPCRA § 304(c): Written follow-up emergency notice provided to the appropriate SERC(s) and LEPC(s) more than 7 calendar days but less than or equal to 14 calendar days following the release.

2. *Emergency Preparedness/Right-to-Know Violations*

For emergency preparedness/right-to-know violations, the extent factor reflects the potential deleterious effect the noncompliance has on: the federal, state, or local government's ability to properly plan for chemical releases, and the public's ability to access the information. Specifically, extent addresses the timeliness and utility of reports submitted. Therefore, the extent factor is used, in part, to provide some built-in incentives for non-reporters to submit the required reports as soon as possible, even if late, and to provide incentives for submitters to fill out the forms in a manner consistent with the statutory and regulatory requirements.

For § 311 violations, the extent levels are:

LEVEL 1: Respondent fails to submit a MSDS for each required hazardous chemical (or list of such chemicals that require MSDSs) as required by § 311(a) to the SERC, LEPC, or fire department within 30 calendar days of the reporting deadline.

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Respondent fails to include a chemical on list submitted.

Respondent fails to respond to request under § 311(c) within 30 calendar days of the reporting obligation.

LEVEL 2: Respondent submits MSDS (or list of chemicals that require MSDSs) to the SERC, LEPC, or fire department after 20 calendar days but within 30 calendar days of the reporting obligation.

Respondent responds to request under § 311(c) after 20 calendar days but within 30 calendar days of the request for information.

LEVEL 3: Respondent submits MSDS (or list of chemicals that require MSDSs) to the SERC, LEPC, or fire department after 10 calendar days within 20 calendar days of the reporting obligation.

Respondent responds to request under § 311(c) after 10 calendar days but within 20 calendar days of the reporting obligation.

For § 312 violations, the extent levels are:

LEVEL 1: Respondent fails to submit Inventory Form to the SERC, LEPC, or fire department within 30 calendar days of reporting deadline; or

Inventory form timely submitted fails to address each hazard category present at the facility. Respondent's failure to address all of the hazard categories renders the submission incomplete.

Inventory form timely submitted covers all hazard categories present at the facility, but fails to cover all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than the reporting thresholds. Respondent's failure to address all of the hazardous chemicals renders the submission incomplete.

Respondent fails to respond to request under § 312(e) within 30 calendar days of the request for information.

LEVEL 2: Respondent submits Inventory Form to the SERC, LEPC, or fire department after 20 calendar days but within 30 calendar days of reporting deadline; or

Respondent responds to request under § 312(e) after 20 calendar days but within 30 calendar days of the required response date.

LEVEL 3: Respondent submits Inventory Form to the SERC, LEPC, or fire department after 10 calendar days but within 20 calendar days of reporting deadline.

Respondent responds to request under § 312(e) after 10 calendar days but within 20 calendar days of the required response date.

C. Gravity

The amount of the chemical involved in the violation is a significant factor in determining the appropriateness of the penalty. The penalty calculation scheme in this Policy assumes that the greater the quantity of chemical released, the more likely that a violation of the reporting requirements will undermine the emergency planning, emergency response, and right-to-know intentions of CERCLA § 103 and EPCRA. Similarly, the greater the amount of chemical stored on site, the greater the need for fire departments and emergency planners to know of its existence and location prior to any explosion or unpermitted release.

1. *Emergency Response Violations*

For emergency response violations, gravity levels are based on the amount of hazardous substance or EHS released. CERCLA hazardous substances and EPCRA EHSs have reportable quantities (RQs) that vary depending on the substance, but range from 1 pound to 10,000 pounds. Reportable quantities were established for hazardous substances to indicate an amount which, if exceeded in a release, would require immediate notification to the proper governmental authorities. The RQ scale itself is a relative measure of the hazards posed by the chemical and therefore the potential threat to human health and the environment; the lower the RQ, the greater the potential threat to human health and the environment. The greater the amount released over the RQ, the greater the potential risk from failure to notify.

If the released material is a mixture which contains one or more EHSs or CERCLA hazardous substances, the owner or operator or person in charge of the facility, must calculate the quantity of mixture which, if released, would result in a release of an EHS or CERCLA hazardous substance above its RQ. Also, "a release into the environment of a substance which is not listed as a CERCLA hazardous substance but which rapidly forms a CERCLA hazardous substance upon release, is subject to the notification requirements of CERCLA § 103. If the amount of the hazardous substance formed as such a reaction product equals or exceeds the RQ for that substance, the release must be reported to the NRC." Superfund Programs; *Reportable Quantity Adjustments*, 51 Fed. Reg. 34, 534 (September 29, 1986).

To determine gravity for emergency response violations, use the following levels:

LEVEL A: The amount released was greater than 10 times the RQ;

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LEVEL B: The amount released was greater than 5, but less than or equal to 10 times the RQ;

LEVEL C: The amount released was greater than 1, but less than or equal to 5 times the RQ.

2. *Emergency Preparedness/Right-to-Know Violations*

For the purposes of emergency preparedness/right-to-know violations, the number and/or amount of the chemical(s) in excess of the reporting threshold present at the facility forms the basis for determining gravity. For §§ 311 and 312, the reporting threshold for EHSs is 500 pounds or the EHS-specific threshold planning quantity (TPQ), whichever is less. For other hazardous chemicals, the reporting threshold for each chemical is 10,000 pounds.

For § 311 violations, the gravity levels are:

LEVEL A: Amount of any hazardous chemical present at the facility at any time during the reporting period was greater than 10 times the reporting threshold;

LEVEL B: Amount of any hazardous chemical present at the facility at any time during the reporting period was greater than 5, but less than or equal to 10 times the reporting threshold;

LEVEL C: Amount of any hazardous chemical present at the facility at any time during the reporting period was greater than 1, but less than or equal to 5 times the reporting threshold.

For § 312 violations, the gravity levels are:

LEVEL A: Failure to report or failure to report in a timely manner: The amount of any hazardous chemical not included in the report was greater than 10 times the reporting threshold;

For reports timely submitted: 10 or more hazardous chemicals, which were required to be included in the report, were not included in the report.

LEVEL B: Failure to report or failure to report in a timely manner: The amount of any hazardous chemical not included in the report was greater than 5, but less than or equal to 10 times the reporting threshold;

For reports timely submitted: More than 5, but less than 10 hazardous chemicals, which were required to be included in the report, were not included in the report.

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LEVEL C: Failure to report or failure to report in a timely manner: The amount of any hazardous chemical not included in the report was greater than 1, but less than or equal to 5 times the reporting threshold;

For reports timely submitted: 1 - 5 hazardous chemicals, which were required to be included in the report, were not included in the report.

D. Circumstances

Circumstances refers to the actual or potential consequences of the violation. One objective of the emergency notification provisions is to alert federal, state, and local officials that a response action may be necessary to prevent injuries or deaths to emergency responders, facility personnel, and the local community. One objective of the emergency planning and community right-to-know provisions is to assist state and local committees in planning for emergencies, and to make information on chemical presence and hazards available to the public. Thus, a failure to report in a manner that meets the standard required by the statute or rule could result in harm to human health and the environment. The potential for harm may be measured by:

the potential for emergency personnel, the community, and the environment, to be exposed to hazards posed by noncompliance;

the adverse impact noncompliance has on the integrity of the CERCLA § 103/EPCRA program;

the relative proximity of the surrounding population;

the effect noncompliance has on the LEPC's ability to plan for chemical emergencies; and

any actual problems that first responders and emergency managers encountered because of the failure to notify (or submit reports) in a timely manner.

After the extent and gravity of the violation have been determined (placing the proposed penalty in a given cell on the matrix), the circumstance factor is used to arrive at a specific penalty within the range for that cell. To incorporate the circumstances of the violation into the base penalty selection process, the case development team may choose any amount between, or including, one of the two end points for that cell. For example, a violation of EPCRA § 312 that occurred on or before January 30, 1997 has been determined to have a Level 1 extent and a Level B gravity, placing the proposed penalty in the matrix cell that contains the range of $18,750 - $12,501. If the circumstances of the violation indicate that the potential for emergency personnel and the surrounding community to be at risk of exposure in the event of a release was high (*e.g.*, the emergency personnel did not know of a chemical's

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presence and could not plan for the safety of the surrounding community in the event of a release), the case development team may decide that the maximum amount for that cell is the appropriate base penalty. The selection of the exact penalty amount within each range is left to the discretion of the enforcement personnel in any given case.

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Table I
Base Penalty Matrices For Violations Which Occurred On or Before January 30, 1997

CERCLA § 103 and EPCRA § 304[4]
GRAVITY (Quantity Released)

EXTENT (timeliness of notification)	LEVEL A (greater than 10 times the RQ)	LEVEL B (greater than 5 but less than or equal to 10 times the RQ)	LEVEL C (greater than 1 but less than or equal to 5 times the RQ)
LEVEL 1 (more than 2 hours)	$25,000 $18,751	$18,750 $12,501	$12,500 $6,251
LEVEL 2 (between 1 and 2 hours)	$18,750 $12,501	$12,500 $6,251	$6,250 $3,126
LEVEL 3 (within 1 hour, after 15 minutes)	$12,500 $6,251	$6,250 $3,126	$3,125 $1,562

EPCRA § 312
GRAVITY (Quantity Present)

EXTENT (timeliness of inventory submission)	LEVEL A (greater than 10 times the MTL)	LEVEL B (greater than 5 but less then or equal to 10 times the MTL)	LEVEL C (greater than 1 but less than or equal to 5 times the MTL)
LEVEL 1 (more than 30 days)	$25,000 $18,751	$18,750 $12,501	$12,500 $6,251
LEVEL 2 (after 20 but within 30 days)	$18,750 $12,501	$12,500 $6,251	$6,250 $3,126

[4]While the penalty amounts in this matrix apply to EPCRA § 304(c), the criteria associated with the levels do not apply. To determine the appropriate extent level for violations of § 304(c), *see* pp. 13-14, *supra*.

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EXTENT (timeliness of inventory submission)	LEVEL A (greater than 10 times the MTL)	LEVEL B (greater than 5 but less then or equal to 10 times the MTL)	LEVEL C (greater than 1 but less than or equal to 5 times the MTL)
LEVEL 3 (after 10 but within 20 days)	$12,500 $6,251	$6,250 $3,126	$3,125 $1,562

EPCRA § 311
GRAVITY (Quantity Present)

EXTENT (timeliness of MSDS submission)	LEVEL A (greater than 10 times the MTL)	LEVEL B (greater than 5 but less than or equal to 10 times the MTL)	LEVEL C (greater than 1 but less than or equal to 5 times the MTL)
LEVEL 1 (more than 30 days)	$10,000 $7,501	$7,500 $5,001	$5,000 $2,501
LEVEL 2 (after 20 but within 30 days)	$7,500 $5,001	$5,000 $2,501	$2,500 $1,251
LEVEL 3 (after 10 but within 20 days)	$5,000 $2,501	$2,500 $1,251	$1,250 $625

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

CERCLA § 103 and EPCRA § 304[5]
GRAVITY (Quantity Released)

EXTENT (timeliness of notification)	LEVEL A (greater than 10 times the RQ)	LEVEL B (greater than 5 but less than or equal to 10 times the RQ)	LEVEL C (greater than 1 but less than or equal to 5 times the RQ)

[5]While the penalty amounts in this matrix apply to EPCRA § 304(c), the criteria associated with the levels do not apply. To determine the appropriate extent level for violations of § 304, *see* pp. 13-14, *supra*.

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LEVEL 1 (more than 2 hours)	$27,500 $20,626	$20,625 $13,751	$13,750 $6,876
LEVEL 2 (between 1 and 2 hours)	$20,625 $13,751	$13,750 $6,876	$6,875 $3,439
LEVEL 3 (within 1 hour, after 15 minutes)	$13,750 $6,876	$6,875 $3,439	$3,438 $1,718

EPCRA § 312
GRAVITY (Quantity Present)

EXTENT (timeliness of inventory submission)	**LEVEL A (greater than 10 times the MTL)**	**LEVEL B (greater than 5 but less than or equal to 10 times the MTL)**	**LEVEL C (greater than 1 but less than or equal to 5 times the MTL)**
LEVEL 1 (more than 30 days)	$27,500 $20,626	$20,625 $13,751	$13,750 $6,876
LEVEL 2 (after 20 but within 30 days)	$20,625 $13,751	$13,750 $6,876	$6,875 $3,439
LEVEL 3 (after 10 but within 20 days)	$13,750 $6,876	$6,875 $3,439	$3,438 $1,718

EPCRA § 311
GRAVITY (Quantity Present)

EXTENT (timeliness of MSDS submission)	**LEVEL A (greater than 10 times the MTL)**	**LEVEL B (greater than 5 but less than or equal to 10 times the MTL)**	**LEVEL C (greater than 1 but less than or equal to 5 times the MTL)**
LEVEL 1 (more than 30 days)	$11,000 $8,251	$8,250 $5,501	$5,500 $2,751
LEVEL 2 (after 20 but within 30 days)	$8,250 $5,501	$5,500 $2,751	$2,750 $1,376

EXTENT (timeliness of MSDS submission)	LEVEL A (greater than 10 times the MTL)	LEVEL B (greater than 5 but less than or equal to 10 times the MTL)	LEVEL C (greater than 1 but less than or equal to 5 times the MTL)
LEVEL 3 (after 10 but within 20 days)	$5,500 $2,751	$2,750 $1,376	$1,375 $688

VI. PAST YEAR VIOLATIONS OF EPCRA § 312

For EPCRA § 312 violations detected for previous years of noncompliance, a flat penalty of $1,500 per year shall be proposed, except where the facts and circumstances warrant the imposition of the full gravity based penalty. The flat penalty applies regardless of the number of entities that failed to receive the report. If, at the time of investigation, solely past violations are detected, *i.e.*, a facility is in compliance for the most recent reporting period, those violations are calculated at the flat penalty of $1,500.

If at the time of the initial investigation an EPCRA § 312 violation is detected for the most recent reporting period, the base penalty matrices in Table I or Table II shall be used to determine the penalty. If during the time between the initial investigation and issuance of the complaint another reporting deadline passes and the facility complies in a timely manner, the penalty for the violation detected during the initial investigation should still be calculated pursuant to the penalty matrices in Table I or Table II. If during the time between the initial investigation and issuance of the complaint another reporting deadline passes and the facility again fails to submit the required report, that subsequent violation shall also be calculated pursuant to the penalty matrices in Table I or Table II (*i.e.*, both violations shall be calculated using the penalty matrices).

VII. PER DAY PENALTIES

EPCRA § 325 and CERCLA § 109 authorize the Agency to assess penalties for violations on a per day basis. Per day penalties serve to promote an expeditious return to compliance by creating disincentives for continued noncompliance and to level the playing field for those who complied in a timely manner. Facilities that delay in notifying the appropriate entities and submitting required information deny citizens their "right to know" of the existence of chemical hazards in their community.

Where a reportable release continues for more than one day, and notification has not occurred, the matrix shall be used to calculate a separate base penalty for each and every day the release continues. When per day penalties are proposed for all other violations, *i.e.*, when a release has ended but timely notification has not occurred, or for any violation of EPCRA § 311 or § 312, calculate the per day penalty component by proposing 1% of the base penalty for each day the violation continues, *i.e.*, each day after March 1st. The case development team should require the respondent to send EPA copies of required submissions to verify compliance.

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VIII. ADJUSTMENT FACTORS

The Agency may consider a number of factors in agreeing to appropriate penalty adjustments. The statutory adjustment factors that apply to the violator are: (A) ability to pay; (B) prior history of violations; (C) degree of culpability; (D) economic benefit or savings (if any) resulting from the violation; and (E) such other matters as justice may require. In addition, the Agency considers the following additional factors in determining an appropriate penalty: (F) size of business; (G) attitude; (H) Supplemental Environmental Projects (SEPs); and (I) voluntary disclosure.

A. Ability to Pay/Continue in Business

The penalty amounts reflected in the matrix assume that the violator has the ability to pay. The Agency will generally not request penalties that are clearly beyond the financial means of the violator. In the event EPA proposes a penalty in excess of the respondent's ability to pay, the respondent must demonstrate its inability to pay the proposed penalty.[6] Nonetheless, EPA reserves the option, in appropriate circumstances, of seeking the full proposed penalty. For example, even when there is an inability to pay, it is unlikely that EPA would reduce a proposed penalty when a facility refuses to correct a serious violation or where a facility has a long history of violations. That long history would demonstrate that less severe measures are ineffective.

In order to determine the appropriateness of the proposed penalty in relation to a company's ability to pay, the case team should review Dun and Bradstreet reports, a company's filings with the Securities and Exchange Commission, or other publicly available financial reports prior to issuance of the complaint.

If an alleged violator raises the ability to pay argument as a defense in its answer, or in the course of settlement negotiations, EPA should request the following types of information[7]:

S An explanation by the alleged violator specifying the reason(s) for claiming an

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[6]Ability to continue in business must be considered, as a matter of law, only when proposing penalties for violations of EPCRA § 304 under EPCRA § 325(b)(2).

[7]ABEL can be used as an initial indicator of a company's ability to pay using the company's most recent 3 to 5 years tax returns. ABEL is the Agency's computer model that helps perform a preliminary analysis of ability to pay for compliance, clean-up, and/or penalties. In addition, the regional financial analyst, or a National Enforcement Investigations Center (NEIC) financial analyst, can help in assessing the financial ability to pay of publicly held corporations. Consult these analysts as to the relevant dates for this information, and any additional information that should be requested specific to the case.

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inability to pay with supporting information

- S 3 -5 years of the most recent signed federal tax returns
- S For the same period as the tax returns: financial audits, reviews or compilations, or, if not performed, company generated financial statements to include but not limited to:
  - S Balance sheets
  - S Income statements
  - S Cash flows
  - S Depreciation schedules
  - S Year to date financial statement (from the end of the most recent fiscal year to the end of the most recent month preceding the request)
  - S Statement of operations
  - S Retained earnings statements
- S Loan applications, financing agreements, security agreements
- S Annual and quarterly reports to shareholders and the SEC, including 10K reports
- S Detail any ownership or control of other companies or ownership or control of the alleged violator company by others not already specified

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 through other sources, then the Agency is entitled to rely on the information it does have.

B. Prior History of Violations

The penalty amounts reflected in the penalty matrices apply to first time violators. Where a violator has demonstrated a history of prior violations, the penalty may need to be adjusted upward. 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. Another reason for penalizing repeat violators more severely than first offenders is the increased resources that are spent on the same violator.

For the purposes of this Policy, the Agency interprets prior violations to mean prior violations of CERCLA § 103(a) and/or prior violations of any of the provisions of EPCRA that have occurred within five (5) years of the date of the current violation. The following criteria apply in evaluating history of prior violations:

(1) Regardless of whether a respondent admits to the violation, evidence of a prior violation may be: a consent agreement and final order (CAFO) executed by a Regional Administrator or his or her designee or the Environmental Appeals

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Board, a federal court judgment, a default judgment, a final administrative judgment, or a consent decree. A prior violation refers collectively to all the violations which may have been described in any of the documents listed above.

(2) Companies with multiple facilities, or wholly or partly owned subsidiaries with a parent corporation, may be considered as one when determining history of prior violations, however, two facilities may not necessarily affect each other's violation history if they are in substantially different lines of business, or if they are substantially independent of one another in their management and in the functioning of their Boards of Directors.

Upward adjustments to the base penalty may be calculated in the following manner:

! For second or subsequent violations of CERCLA § 103 and EPCRA § 304, the Acts authorize penalties of up to $82,500 per violation per day. For these violations, the base penalty may be increased up to three times the amount shown at the appropriate position of the matrix in Table I or II.

! For second violations of EPCRA §§ 311 and 312 the base penalty may be adjusted upward by 25%, not to exceed the statutory maximum penalty of $27,500. This upward adjustment may also be applied to violations of CERCLA § 103 or EPCRA § 304 when there exists prior violations of EPCRA §§ 311, 312, or 313.

! For third and subsequent violations of EPCRA §§ 311 and 312, the base penalty may be adjusted upward by 50%, not to exceed the statutory maximum penalty of $27,500. This upward adjustment may also be applied to violations of CERCLA § 103 or EPCRA § 304 when there exists prior violations of EPCRA §§ 311, 312, or 313.

C. Degree of Culpability

EPCRA is a strict liability statute, however, some adjustment may be made for a violator's culpability. The two principal criteria for assessing culpability are: (a) the violator's knowledge of the particular EPCRA requirement, and (b) the degree of the violator's control over the violative condition.[8] For penalty purposes, three levels of culpability have been assigned:

Level I: The violation is willful, *i.e.*, the violator intentionally committed an act which he/she knew would be a violation or would be hazardous to health or the environment. --- Adjust the penalty *upward* 25%.

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[8] *See Guidelines for the Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act: PCB Penalty Policy*, 45 Fed. Reg. 59,770, 59,773 (September 10, 1980) for a description of "knowledge" and "degree of control over the violation."

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Level II: The violator either had sufficient knowledge to recognize the hazard created by his/her conduct, or significant control over the situation to avoid committing the violation. --- No adjustment to the penalty.

Level III: The violator lacked sufficient knowledge of the potential hazard created by his/her conduct, and also lacked control over the situation to prevent occurrence of the violation. --- Adjust the penalty *downward* 25%.

It is anticipated that most cases will present Level II culpability. Level I situations, in many instances, could be treated as criminal violations.

D. Economic Benefit or Savings

EPA should consider any economic benefit from noncompliance that accrues to the violator when proposing penalties. Whenever there is an economic incentive to violate the law, it encourages noncompliance and thus weakens EPA's ability to implement the Acts and protect human health and the environment. The violator should not benefit from its violative acts.

For EPCRA §§ 304(c), 311, and 312 reporting violations, the economic benefit or savings typically is derived from the estimated cost of rule familiarization, producing and submitting the reports, and any filing fees that are imposed by states. *See* Table III, *infra*. For violations of EPCRA § 304(a) and CERCLA § 103 the economic benefit or savings typically is derived from the estimated cost of rule familiarization, release reportability determination, and the notification of the required reporting entities.

The Regulatory Impact Analyses for EPCRA §§ 304, 311, 312 and CERCLA § 103 regulations establish unit costs for producing the required reports and making the required notifications. These cost estimates should be used unless more accurate data is available. In using this information to determine economic savings for multiple violations, rule familiarization costs should be counted only once, while other costs should be counted for each violation. If the amount of economic benefit of noncompliance is less than or equal to $5,000, EPA, in its discretion, may choose to waive or forego seeking assessment of a civil penalty for such economic benefit which has accrued to Respondent from its noncompliance.

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Table III
Costs Associated with EPCRA/CERCLA 103 Compliance[9]

EPCRA SECTION 304

RULE FAMILIARIZATION	Legal Hours $100/hr	Manager Hours $37.72/hr	Technical Hours $27.90/hr	Clerical Hours $16.69/hr	Total Costs of Compliance
Read and understand regulations at 40 C.F.R. Part 355	1.00	2.50	7.50	0.00	$404

EMERGENCY RELEASE NOTIFICATION (40 C.F.R. § 355.40)	Legal Hours $100/hr	Manager Hours $37.72/hr	Technical Hours $27.90/hr	Clerical Hours $16.69/hr	Total Costs of Compliance
Determine if release is an RQ (355.40(a))	0.00	0.10	0.10	0.00	$7
Notify LEPC and SERC of any RQ release (355.40(b)(1))	0.00	0.50	0.00	0.00	$19
Develop and submit written follow-up notice (355.40(b)(3))	0.50	0.65	2.25	0.95	$153
Notify 911 operator of transportation - related releases (355.40(b)(4)(ii))	0.00	0.25	0.00	0.00	$9

CERCLA SECTION 103

ACTIVITY	Legal Hours	Manager Hours $37.42/hr	Technical Hours $26.62/hr	Clerical Hours $16.19/hr	Other costs	Total Costs of Compliance
NRC Notification	n/a	1.00	1.00	0.00	$0.00	$64
Recordkeeping	n/a	0.10	1.00	1.00	$0.00	$47

EPCRA SECTIONS 311 & 312

RULE FAMILIARIZATION	Legal Hours $100/hr	Manager Hours $37.72/hr	Technical Hours $27.90/hr	Clerical Hours $16.69/hr	Total Costs of Compliance
Read and understand regulations at 40 C.F.R. Part 370	4.60	2.20	2.20	0.00	$604

[9]Sources: EPA, Office of Chemical Emergency Preparedness and Prevention Office, *Statement Supporting the Renewal of the Information Collection Procedure for the Community Right-to-Know of the Emergency Planning and Community Right-to-Know Act*, 1997; EPA, Office of Emergency and Remedial Response, *Economic Impact Analysis of Proposed Reportable Quantity Adjustments added as RCRA Hazardous Wastes and CERCLA Hazardous Substances, Volume VII*, 1996.

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MSDS REPORTING (40 C.F.R. § 370.21)	Legal Hours $100/hr	Manager Hours $37.72/hr	Technical Hours $27.90/hr	Clerical Hours $16.69/hr	Total Costs of Compliance
Basic Reporting					
Determine which chemicals meet/exceed MTLs	**0.00**	**0.25**	**0.90**	**0.00**	**$35**
Calculate quantity for mixtures	**0.00**	**0.50**	**1.80**	**0.00**	**$69**
Submit MSDSs to LEPC, SERC, and fire department (370.21(a)); or	**0.08**	**0.08**	**0.17**	**0.34**	**$21**
Alternative Reporting					
Submit list of hazardous chemicals grouped by hazard category (370.21(b)(1))	**0.00**	**0.00**	**0.00**	**0.17**	**$3**
Submit list of chemical or common name of hazardous chemical as provided in each MSDS (370.21(b)(2))	**0.00**	**0.00**	**0.00**	**0.17**	**$3**
Supplemental Reporting					
Submit revised MSDSs (370.21(c)(1))	**0.08**	**0.08**	**0.17**	**0.34**	**$21**
Submit new MSDSs (370.21(c)(2))	**0.08**	**0.08**	**0.17**	**0.34**	**$21**
Additional Reporting					
Submit MSDS upon request (370.21(d))	**0.08**	**0.08**	**0.17**	**0.34**	**$21**

INVENTORY REPORTING (40 C.F.R. § 370.25)	Legal Hours $100/hr	Manager Hours $37.72/hr	Technical Hours $27.90/hr	Clerical Hours $16.69/hr	Total Costs of Compliance
Basic Reporting					
Develop and submit Tier I inventory form annually (370.25(a))	**0.00**	**0.25**	**2.60**	**0.25**	**$86**
Alternative Reporting					
Develop and submit Tier II inventory form, in lieu of Tier I form, annually (370.25(b))	**0.00**	**0.25**	**2.60**	**0.25**	**$86**
Additional reporting					
Submit Tier I form to LEPC, SERC, and fire department upon request (370.25(c))	**0.00**	**0.00**	**0.00**	**0.17**	**$3**
Provide specific location information to fire department upon request (370.25(d))	**0.00**	**0.00**	**0.00**	**0.17**	**$3**

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E. Other Matters as Justice May Require

This Policy acknowledges that no two cases are exactly alike. Unique circumstances above and beyond those taken into account by the factors discussed in the previous sections may be significant in determining the appropriateness of a penalty for settlement. Any reductions made under this section shall be documented in the case file. It is suggested that this reduction not exceed 10% except where the facts and circumstances warrant a greater reduction.

F. Size of Business

Prior to issuance of the complaint, the Agency may reduce the proposed base penalty by 15% for first time violators whose business employs 100 or fewer people, **and** whose annual total corporate entity sales are less than $20 million except where the facts and circumstances preclude any reduction.

G. Attitude

The attitude adjustment has two components: (1) cooperation and (2) willingness to settle.

(1) The Agency may reduce the penalty up to 25% based on respondent's cooperation throughout the compliance evaluation/enforcement process. Factors include respondent's: responsiveness and expeditious provision of supporting documentation requested by EPA, cooperation and preparedness during the settlement process, and speed and completeness of achieving compliance. The Agency believes that a greater penalty reduction should be given to those respondents who come into compliance prior to the initiation of an EPA investigation.

(2) The Agency may reduce the penalty up to an additional 10% should the respondent and the Agency agree to a settlement in principle within 90 days from the date of the issuance of the complaint.

H. Supplemental Environmental Projects

To further the goals of the EPA to protect and enhance public health and the environment, certain environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be included in the settlement.

SEPs are environmentally beneficial projects which a respondent agrees to undertake in settlement of an environmental enforcement action, but which the defendant is not otherwise legally required to perform. In return, some percentage of the cost of the SEP is considered as a factor in establishing the final penalty to be paid by the respondent.

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EPA has broad discretion to settle cases with appropriate penalties. Evidence of a violator's commitment and ability to perform a SEP is a relevant factor for EPA to consider in establishing an appropriate settlement penalty. The commitment to perform a SEP may indicate a respondent's new or extraordinary efforts to be a good environmental citizen.

While SEPs may not be appropriate in settlement of all cases, they are an important part of EPA's enforcement program. Whether to include a SEP as part of a settlement of an enforcement action is within the sole discretion of EPA. EPA must ensure that the inclusion of a SEP in settlement is consistent with the Agency's SEP Policy in effect at the time of the settlement.

I. Voluntary Disclosure

Facilities that conduct an audit and voluntarily self-disclose any violations of EPCRA §§ 304, 311, 312, or CERCLA § 103 under the Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations Final Policy Statement, 60 Fed. Reg. 66,706 (December 22, 1995), may be eligible for a 100% reduction in the gravity-based penalty, if they meet the nine criteria established in the policy.

If a facility self-discloses violations not covered by the Agency's Self-Policing Policy, the penalty amount may still be reduced for such a voluntary disclosure. To be eligible for such a reduction, a facility must submit a signed statement of voluntary disclosure to EPA describing the alleged violations. A facility will not be eligible for any reduction if there has been notification of a scheduled inspection or the inspection has begun, or the facility has otherwise been contacted by EPA for the purpose of determining compliance with EPCRA/CERCLA § 103.

Voluntary disclosure of a violation will result in a 25% reduction of the gravity based penalty. To encourage immediate disclosure, an additional 25% reduction will be given for disclosures made within 30 days of having reason to believe that a violation occurred.

The reduction for voluntary disclosure and immediate disclosure may be made prior to issuing the Civil Complaint. The Civil Complaint should state the original penalty and the reduced penalty and the reason for the reduction.

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PENALTY CALCULATION WORKSHEET

Respondent: _____
Count #: _____
Chemical Name/RQ/TPQ: _____

NATURE: Type of Violation: EPCRA 304 EPCRA 311 EPCRA 312 CERCLA 103 (Circle one).

EXTENT: Time passed from deadline to actual date of compliance (in hours or days): _____
Matrix Level: _____

GRAVITY: Divide amount of chemical involved in the violation (lbs.):_____ by _____ (RQ/TPQ) = _____
Matrix Level:_____

CIRCUMSTANCES: Specify choice of penalty amount from range listed for the cell of the matrix based on circumstance factors: _____

1.	Base Penalty		$_____
2.	If per day, continuing reportable release, multiply line 1 by _____ days, beginning with the second day of violation.		$_____
3.	Other per day violations, multiply line 1 by .01 = _____. Multiply the per day penalty _____ by _____ days, beginning with the second day of violation.		$_____
4.	Add lines 1-3		$_____
5.	Prior History: (Treble, 25%, 50%: +_____)	$_____	
6.	Culpability (% increase or decrease +/- _____%)	$_____	
7.	Other factors as justice may require (-_____%)	($_____)	
8.	Size of business reduction (-_____%)	($_____)	
9.	Attitude (-_____%)	($_____)	
10.	Supplemental Environmental Project (-_____)	($_____)	
11.	Voluntary Disclosure (-_____)	($_____)	
12.	Subtract lines (5-11) from line 4		$_____

Repeat procedure for each violation.

Prepared by:_____
Signature:_____ Date:_____