EPCRA § 313 PENALTY CALCULATIONS 101

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EPCRA § 313's Enforcement Response Policy (ERP) is utilize to determine the monetary extent, i.e., penalty, of a violation of the statute (42 U.S.C. § 11023).

The statue requires that a facility who comes under the jurisdiction of EPCRA § 313 submit reports by July 1st, on releases and waste management activities, for each TRI chemical, for which a threshold has been exceeded.

It is a violation of 42 U.S.C. § 11023 and 40 C.F.R. Part 372 to submit reports after the due date of July 1st.

Reporting after the July 1st due date constitutes failure to report in a timely manner.

The violation comes in two flavors:

1. Failure to timely report – more than a year late from the due date of the reporting form, and

2. Failure to timely report – less than a year late from the due date of the reporting form.

The gravity-based penalty for failure to timely report, more than a year late, can simply be derived directly from the EPCRA § 313 ERP penalty matrix which was provided by OECA. The penalty amount is determine by the **Extent Level** of the violation which is derived from page 9 of the ERP and is based on:

1. if the TRI chemical in violation had usage at the facility at greater than (>), or less than (<) 10 x threshold

   Threshold for reporting a non-PBT (persistent bioaccumulative toxin) TRI chemical is based on its *activity or use* at the facility.

   Manufacturing threshold is 25,000 lbs/yr
   Processing threshold is 25,000 lbs/yr
   Otherwise using threshold is 10,000 lbs/yr

   If the TRI chemical in violation was "processed" at the in an amount greater than 250,000 lbs this would place that chemical in either **Extent Level A or B,** depending on the next two criteria

   For usage less than 10x threshold the **Extent Level** would be either **B or C,** also depending on the next two criteria

2. the facility had corporate sales greater than (>) or less than (<) $10MM
3. the facility had greater than (>) or less than (<) 50 employees

Once the **Extent Level** of the violation has been determined, the **Circumstance Level** based on the type of violation. See page 12 of the ERP. **Circumstance Level 1,** the most severe, is allocated to *failure to report in a timely manner.* Less severe violations are given lower **Circumstance Levels.**

Gravity-Based Penalty Flavor 1 (more than a year late in reporting)

The gravity-based penalty is determine by the intersection of the **Circumstance Level and Extent Level of the violation** within the EPCRA § 313 Penalty Matrix.

For one TRI chemical which was submitted to EPA **more than a year late** and which was determined to have an **Extent Level of 1** and a **Circumstance Level of B**, the gravity based penalty would be **$24,080**.

Gravity-based penalty matrix
to supplement Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-To-Know Act (1989) and Section 6607 of the Pollution Prevention Act (1990) for violations that occur after January 12, 2009

GRAVITY-BASED PENALTY MATRIX FOR EPCRA SECTION 313

CIRCUMSTANCE LEVEL	EXTENT		
	A Major	B Significant	C Minor
LEVEL 1	$37,500	$24,080	$7,090
LEVEL 2	$28,330	$18,420	$4,250
LEVEL 3	$21,250	$14,170	$2,130
LEVEL 4	$14,170	$8,500	$1,420
LEVEL 5	$7,090	$4,250	$710
LEVEL 6	$2,840	$1,850	$290

Gravity-Based Penalty Flavor 2 (less than a year late in reporting)

The gravity-based penalty for one TRI chemical which was submitted to EPA **less than a year late** must be determine using what is referred to as the "per day formula" which is found at the top of page 14 of the ERP.

The basis of the calculation is on the number of days late the form was submitted to EPA and using a combination of **Circumstance Levels 1 and 4**.

TRI reports for the 2014 calendar were due to EPA on or before July 1, 2015. Valero did not submit their reports until November 23, 2015. Utilizing "date math" in Excel it is determine that the number of days late their reports were submitted is 145 days.

DATE FORM R WAS DUE =	July 1, 2015
DATE FORM R SUBMITTED =	November 23, 2015
Difference in days from one date to next. (does not include 1st day's date, but does include the last day of date specified)	145

Valero reported to EPA for the 2014 calendar year they had more than 50 employees and had gross annual sales of more than $10MM.

Based on the usage of the TRI chemical, i.e. > 10x threshold, or < 10x threshold, this would place the gravity-based penalty calculation at either **Extent Level A** for > 10x threshold or **Extent Level B** for < 10x threshold

Again, using the ERP penalty matrix, **Circumstance Levels 1 and 4** must be extracted for **Extent Levels A and B** to be appropriately utilized in the "per day formula"

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Let's use the first chemical in Valero's list of late reported chemicals to calculate the gravity-based penalty – 1,2,4-trimethylbenzene

<u>Givens</u>

145 days late (due July 1, 2015, reported November 23, 2015
Usage (from Valero): 118,424,675 pounds
Activity: *processed, threshold 25,000 lbs*
10x threshold = 250,000 pounds
118,424,675 pounds >> 250,000 pounds, therefore > 10x threshold.
Extent Level = A (> 10x, > 50 employees, > $10MM)
Circumstance Level 1 = $37,500
Circumstance Level 4 = $14,170

Utilizing the per day formula:

14

Level 4 Penalty +

$$\frac{(\text{\# of days late} - 1) \times (\text{Level 1} - \text{Level 4 Penalty})}{365}$$

$$\$14{,}170 + \frac{(145 - 1) \times (\$37{,}500 - \$14{,}170)}{365}$$

$$\$14{,}170 + \frac{(144)\ (\$23{,}330)}{365}$$

$14,170 + $9,204

$23,374

This amount is in agreement with the formula generated amount, found in the spreadsheet:

Usage (lbs)	> or < 10X Threshold	Extent Level	Gross Penalty
118,424,675	>10X	A	$23,374

All TRI chemicals who exceed 10x threshold, with an Extent Level of A, will have $23,374 as the gravity-based penalty amount.

The same procedure as above would be conducted for Extent Level B.

Each TRI chemical reported late constitutes a separate penalty counts.
This constitutes 34 chemicals reported late by Valero for the 2014 calendar year.

On the next page is the complete tabulation of penalty assessment for Valero.

TRI_Chemical	RY_Due_Date	Submitted	# Days_Late_Reporting	M, P, OWU	Usage (lbs)	> or < 10X Threshold	Extent Level	Gross Penalty		> 1 Year Late
1 2 4-TRIMETHYLBENZENE	7/1/2015	11/23/2015	145	P	118,424,675	>10X	A	$23,374		$37,500
1 3-BUTADIENE	7/1/2015	11/23/2015	145	M	109,695	<10X	B	$14,647		$24,080
AMMONIA	7/1/2015	11/23/2015	145	M	2,552,458	>10X	A	$23,374		$37,500
ANTHRACENE	7/1/2015	11/23/2015	145	M	1,800,277	>10X	A	$23,374		$37,500
BENZENE	7/1/2015	11/23/2015	145	P	82,933,721	>10X	A	$23,374		$37,500
BENZO(G H I)PERYLENE	7/1/2015	11/23/2015	145	M	1,628,977	>10X	A	$23,374		$37,500
CARBON DISULFIDE	7/1/2015	11/23/2015	145	M	783,908	>10X	A	$23,374		$37,500
CARBONYL SULFIDE	7/1/2015	11/23/2015	145	M	780,114	>10X	A	$23,374		$37,500
COBALT COMPOUNDS	7/1/2015	11/23/2015	145	M	35,174	<10X	B	$14,647		$24,080
CRESOL (MIXED ISOMERS)	7/1/2015	11/23/2015	145	M	787,642	>10X	A	$23,374		$37,500
CUMENE	7/1/2015	11/23/2015	145	P	90,996,411	>10X	A	$23,374		$37,500
CYCLOHEXANE	7/1/2015	11/23/2015	145	P	171,882,110	>10X	A	$23,374		$37,500
DIOXIN AND DIOXIN-LIKE COMPOUNDS	7/1/2015	11/23/2015	145	M	0.287040	<10X	B	$14,647		$24,080
ETHYLBENZENE	7/1/2015	11/23/2015	145	P	71,612,816	>10X	A	$23,374		$37,500
ETHYLENE	7/1/2015	11/23/2015	145	P	33,080,571	>10X	A	$23,374		$37,500
HYDROCHLORIC ACID (1995 AND AFTER "ACID AEROSOLS" ONLY)	7/1/2015	11/23/2015	145	M	36,019	<10X	B	$14,647		$37,500
HYDROGEN FLUORIDE	7/1/2015	11/23/2015	145	OWU	754,660	>10X	A	$23,374		$37,500
HYDROGEN SULFIDE	7/1/2015	11/23/2015	145	M	78,094,702	>10X	A	$23,374		$37,500
LEAD COMPOUNDS	7/1/2015	11/23/2015	145	P	8,790	>10X	A	$23,374		$37,500
MERCURY COMPOUNDS	7/1/2015	11/23/2015	145	P	32	<10X	B	$14,647		$24,080
METHANOL	7/1/2015	11/23/2015	145	OWU	47,168	<10X	B	$14,647		$24,080
MOLYBDENUM TRIOXIDE	7/1/2015	11/23/2015	145	OWU	124,230	>10X	A	$23,374		$37,500
NAPHTHALENE	7/1/2015	11/23/2015	145	P	43,865,249	>10X	A	$23,374		$37,500
N-HEXANE	7/1/2015	11/23/2015	145	M	44,860,792	>10X	A	$23,374		$37,500
NICKEL COMPOUNDS	7/1/2015	11/23/2015	145	M	71,047	<10X	B	$14,647		$24,080
NITRATE COMPOUNDS	7/1/2015	11/23/2015	145	M	56,473	<10X	B	$14,647		$24,080
PHENANTHRENE	7/1/2015	11/23/2015	145	M	10,963,869	>10X	A	$23,374		$37,500
PHENOL	7/1/2015	11/23/2015	145	M	2,742,861	>10X	A	$23,374		$37,500
POLYCYCLIC AROMATIC COMPOUNDS	7/1/2015	11/23/2015	145	M	16,373,966	>10X	A	$23,374		$37,500
PROPYLENE	7/1/2015	11/23/2015	145	M	196,106,786	>10X	A	$23,374		$37,500
STYRENE	7/1/2015	11/23/2015	145	M	2,910,321	>10X	A	$23,374		$37,500
SULFURIC ACID (1994 AND AFTER "ACID AEROSOLS" ONLY)	7/1/2015	11/23/2015	145	M	117,688	<10X	B	$14,647		$24,080
TETRACHLOROETHYLENE (PERCHLOROETHYLENE)	7/1/2015	11/23/2015	145	OWU	40,890	<10X	B	$14,647		$24,080
TOLUENE	7/1/2015	11/23/2015	145	M	245,967,583	>10X	A	$23,374		$37,500
XYLENE (MIXED ISOMERS)	7/1/2015	11/23/2015	145	P	74,532,212	>10X	A	$23,374		$37,500
							TOTAL	**$730,820**		**$1,191,720**