

II.
Nature of the Case

2.1 This lawsuit is a civil enforcement proceeding in which the State of Texas seeks to recover civil penalties and attorney's fees for violations of environmental laws at several Texas facilities owned and operated by Defendants. The violations in this case primarily involve violations of the Texas Clean Air Act ("TCAA"). TEX. HEALTH & SAFETY CODE §§ 382.001, *et seq.*

III.
Plaintiff

3.1 Plaintiff, State of Texas, is authorized to bring this suit through its Attorney General at the request of the TCEQ pursuant to the TCAA and the enforcement provisions of the Texas Water Code. TEX. WATER CODE § 7.105.

IV.
Defendants

4.1 Defendant Equistar Chemicals, L. P. ("Equistar") is a Delaware limited partnership authorized to conduct, and is in fact conducting, business in Texas. Equistar may be served by serving its registered agent CT Corporation System, 1021 Main Street, Ste 1150, Houston, Texas, or by serving its general partner, Millennium Petrochemicals GP LLC ("Millennium LLC") who may be served with process by serving its registered agent CT Corporation System, 1021 Main Street, Ste 1150,

Houston, Texas 77002.

4.2 Defendant Millennium Petrochemicals GP LLC is a Delaware limited liability company authorized to conduct, and is in fact conducting, business in Texas. Millennium LLC may be served with process by serving its registered agent CT Corporation System, 1021 Main Street, Ste 1150, Houston, Texas 77002, or by serving its manager, Millennium Petrochemicals, Inc. (“Millennium Inc.”; collectively with Millennium LLC, “Millennium”) who may be served by serving its registered agent CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

4.3 Defendant Millennium Petrochemicals, Inc. is a Virginia corporation authorized to conduct, and is in fact conducting, business in Texas. Millennium Inc. may be served with process by serving its registered agent CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

4.4 Defendant Lyondell Chemical Company, Inc. (“Lyondell”) is a Delaware corporation authorized to conduct, and is in fact conducting, business in Texas. Lyondell may be served with process by serving its registered agent CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

V.
Jurisdiction and Venue

5.1 This Court has jurisdiction over this case. TEX. WATER CODE §§ 7.002, 7.105(a).

5.2 Venue is proper in Travis County, Texas. TEX. WATER CODE § 7.105(c).

VI.
Background

6.1 On its website, Lyondell describes itself as “a global leader in the manufacture of chemicals and polymers manufactur[ing] basic chemicals and derivatives including ethylene, propylene, titanium dioxide, styrene, polyethylene, propylene oxide and acetyls.” Prior to its 2004 purchase by Lyondell, Millennium also engaged in the manufacture of chemicals and chemical products. Lyondell and Millennium formed a joint venture called Equistar Chemicals, L.P. As a result of the 2004 acquisition of Millennium, Lyondell now owns Equistar.

6.2 Through its subsidiary Millennium and its joint venture Equistar, Lyondell operates several chemical plants in Texas. The Lyondell Chemical Plants operate under permits issued by the TCEQ and are subject to both federal and state environmental laws and regulations.

6.3 The Lyondell Chemical Plants have been major emission sources of

volatile organic compounds (“VOCs”), highly reactive volatile organic compounds (“HRVOCs”), nitrogen oxides (“NO_x”), and carbon monoxide (“CO”) air pollution in the Houston/Galveston area and along the Texas Gulf Coast region.

6.4 As a result of TCEQ investigations and deviation reports submitted by the Defendants, the TCEQ determined that the Defendants have committed numerous violations of environmental permits, laws, and regulations.

VII. Applicable Law

7.1 The TCEQ has the powers necessary or convenient to administer and enforce the TCAA. TEX. HEALTH & SAFETY CODE §382.011.

7.2 The TCEQ’s rules regarding the TCAA are found in the Texas Administrative Code. Some of these rules incorporate federal regulations by reference.

A. General Prohibitions

7.3 Unless authorized by the TCEQ, no person may cause, suffer, allow, or permit the emission of any air contaminant. TEX. HEALTH & SAFETY CODE §382.085(a).

7.4 No person may cause, suffer, allow, or permit any activity in violation of the TCAA or any TCEQ rule or order. TEX. HEALTH & SAFETY CODE §382.085(b). *See also* TEX. WATER CODE § 7.101.

7.5 Any owner or operator of an air contaminant source must comply with any new source performance standards in 40 C.F.R. Part 60, and any emission standards for hazardous air pollutants in 40 C.F.R. Parts 61 and 63, as provided for in sections 111 and 112 of the Federal Clean Air Act (42 U.S.C. §§ 7411, 7412). 30 TEX. ADMIN. CODE § 101.20.

7.6 TCEQ regulations incorporate the Organic Hazardous Air Pollutants for Equipment Leaks Maximum Achievable Control Technology standard as specified in 40 C.F.R. Part 63, Subpart H, as amended through June 23, 2003 (68 Fed. Reg. 37345). 30 TEX. ADMIN. CODE § 113.130.

B. Definitions

7.7 A “component” is “[a] piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak [VOCs].” 30 TEX. ADMIN. CODE § 115.10(6).

7.8 A “connector” is “[a] flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. . . .” 30 TEX. ADMIN. CODE § 115.10(7).

7.9 In Harris, Brazoria, and Galveston counties, ethylene and propylene are HRVOCs. 30 TEX. ADMIN. CODE § 115.10(18).

C. Permitting

7.10 The TCEQ may issue both state and federal operating permits. TEX. HEALTH & SAFETY CODE § 382.051.

7.11 Permits issued by the TCEQ are conditioned upon: “(1) representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption; and (2) any general and special conditions attached to the permit, special permit, or special exemption itself.” 30 TEX. ADMIN. CODE § 116.116(a).

7.12 A permit holder must comply with all terms and conditions of the permit. 30 TEX. ADMIN. CODE §§ 116.115, 122.143(4).

D. Fugitive Emission Monitoring

7.13 Operators in the Houston/Galveston/Brazoria areas must conduct quarterly monitoring with a hydrocarbon gas analyzer to determine the screening concentration from all pump seals and accessible valves. 30 TEX. ADMIN. CODE §§ 115.354(2)(B) - (C).

7.14 “The emissions from blind flanges, caps, or plugs at the end of a pipe or line containing HRVOC; connectors; heat exchanger heads; sight glasses; meters;

gauges; sampling connections; bolted manways; hatches; agitators; sump covers; junction box vents; covers and seals on volatile organic compound water separators; and process drains shall be monitored each calendar quarter (with a hydrocarbon gas analyzer).” 30 TEX. ADMIN. CODE § 115.781(b)(3).

7.15 Pumps must be visually inspected each week to determine whether any liquid is dripping from the seals. 30 TEX. ADMIN. CODE § 115.781(c).

7.16 “The initial monitoring of all components for which monitoring is required under [30 TEX. ADMIN. CODE §§ 115.780 - 115.789], but are not required to be monitored under Subchapter D, Division 3 of this chapter [30 TEX. ADMIN. CODE §§115.352 - 115.359], must occur as soon as practicable, but no later than March 31, 2004. . . .” 30 TEX. ADMIN. CODE § 115.789(1).

7.17 The owner or operator of a process unit must monitor each pump monthly to detect leaks. 40 C.F.R. § 63.163(b)(1).

7.18 Each pump in light liquid service must be monitored monthly to detect leaks. 40 C.F.R. § 60.482-2(a)(1).

7.19 An owner or operator of a facility is required to monitor all valves, generally on a quarterly basis. 40 C.F.R. § 63.168(b) - (c).

7.20 Each valve in volatile hazardous air pollutant (“VHAP”) or light liquid service must be monitored monthly to detect leaks. 40 C.F.R. §§ 61.242-7(a), (c), 60.482-7(a), (c).

7.21 An owner or operator of a process unit subject to 40 C.F.R. §§ 63.160 - 63.183 must monitor all connectors in gas/vapor and light liquid service at least once per year. 40 C.F.R. § 63.174(a) - (b).

E. Emission Controls

7.22 The vapors from transport vessels in the Houston/Galveston areas must vent to an emission control device if it has a nominal storage capacity of 8,000 gallons and a vapor space partial pressure greater than or equal to 0.5 pounds per square inch absolute (“psia”) under storage conditions. 30 TEX. ADMIN. CODE § 115.541(a)(2).

7.23 An owner or operator of each VOC transfer operation, transport vessel, and marine vessel in the Houston/Galveston areas shall control the emissions from loading operations where vapors from VOCs are at a true vapor pressure of 0.5 psia. These vapors must be controlled by a vapor control system which maintains a control efficiency of at least 90%. After unloading, transport vessels must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of

that operation. 30 TEX. ADMIN. CODE § 115.212(a).

7.24 A vent gas stream containing VOCs may not be emitted from any process vent in the Houston/Galveston areas unless it achieves a control efficiency of at least 90% or a VOC concentration of no more than 20 parts per million by volume (“ppmv”). 30 TEX. ADMIN. CODE §§ 115.121(a)(1), 115.122(a)(1).

7.25 Group 1 transfer racks must be equipped with a vapor collection and control system. 40 C.F.R. § 63.126(a).

7.26 Flares shall be used only with the net heating value of the gas being combusted of at least being 300 British thermal units per standard cubic foot (“Btu/scf”) if the flare is steam-assisted or air-assisted. 40 C.F.R. § 60.18(c)(3)(ii).

7.27 Once a leak is found, the facility must make its first attempt at repair within five days, and complete repairs within fifteen days. 30 TEX. ADMIN. CODE § 115.352(2).

7.28 Each pipe or line must be sealed with a valve, flange, plug, or cap. 30 TEX. ADMIN. CODE § 115.352(4).

F. Recordkeeping and Reporting

7.29 Operators in the Houston/Galveston/Brazoria areas shall maintain records on components and process areas that contain, at a minimum, “(A) the name of the process unit where the component is located; (B) the type of component (e.g.,

pump, compressor, valve, pressure relief valve, etc.); (C) all data collected in accordance with the monitoring and inspection requirements of §115.354 of this title . . . for each component required to be monitored with a hydrocarbon gas analyzer. . . .” 30 TEX. ADMIN. CODE § 115.356(2).

7.30 Every six months, a Federal operating permit holder must submit a written report containing “all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.” These reports must be submitted to the TCEQ within 30 days of the end of each reporting period. 30 TEX. ADMIN. CODE § 122.145.

7.31 Deviation reports must be signed and certified as accurate by a company’s designated responsible official. 30 TEX. ADMIN. CODE §§ 122.143(15), 122.165.

7.32 The owner or operator of each unit required to install a continuous emission monitoring system (“CEMS”) is required to submit semi-annual reports of the monitoring performance, including downtime. Reports must be postmarked by the end of the 30th day following the end of each calendar semiannual period. 30 TEX. ADMIN. CODE § 117.219(d).

G. Remedies

7.33 Each violation of the TCAA is subject to a civil penalty between \$50 and \$25,000. TEX. WATER CODE § 7.102. Each day of a continuing violation is a separate violation. *Id.*

7.34 If the State prevails, it is entitled to reasonable attorney's fees, court costs, and investigative costs. TEX. WATER CODE § 7.108; TEX. GOV'T CODE § 402.006.

**VIII.
Millennium La Porte Background**

8.1 On information and belief, Millennium owns and operates a chemical facility at 1515 Miller Cut Off Road, Deer Park, Texas 77536 ("Millennium La Porte"). In 2004, Lyondell acquired the stock of Millennium, which is now a direct subsidiary of Lyondell.

A. Millennium La Porte Permits

1. Permit No. 4751

8.2 On May 17, 2001, the TCEQ issued revised Permit No. 4751 ("Permit 4751") according to the New Source Review provisions of the TCAA.¹ Permit 4751

¹The State has attempted to identify the version or versions of each permit that are applicable to the specific violations alleged in this Petition. However, by reference to a permit, the State intends to reference each version and revision of that Permit, including versions and revisions dated before or after the dates cited in the Petition, that contain the same or similar provisions that are in issue and

applies to Millennium La Porte and contains the following General Conditions (“GC”) and Special Conditions (“SC”):

- A. Accessible valves shall be monitored by leak checking for fugitive emissions at least quarterly with an approved gas analyzer. SC 1F, pp. 1 - 2.
- B. All pump and compressor seals shall be monitored with an approved gas analyzer at least quarterly. SC 1G, p. 2.
- C. Millennium La Porte is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 63, subparts A [40 C.F.R. §§ 63.1 - .16]; F [40 C.F.R. §§ 63.100 - .107]; G [40 C.F.R. §§ 63.110 - .152]; & H [40 C.F.R. §§ 63.160 - .183]. SC 11, p. 7.
- D. Emission rates must not exceed the “Emission Sources - Maximum Allowable Emission Rates” table (“MAERT”) attached to the permit. GC 8, p. 1; *see also* 30 TEX. ADMIN. CODE § 116.115(b)(2)(F).
- E. The MAERT permits the following emissions:
 - 1. For the thermal oxidizing flare, EPN# QE6801U, VOC limits of 5.76 pounds per hour (“lbs/hr”) and 1.02 tons per year (“tpy”);
 - 2. For the rail/truck loading scrubber, EPN# AARTSC, VOC limits

may be applicable to the violations alleged by the State.

of 4.37 lbs/hr and 2.04 tpy;

3. For the catalytic oxidizer, EPN# VAMCATOX, VOC limits of 1.56 lb/hr and 6.88 tpy.

F. Railcar or tank truck loading waste gases must be routed to two scrubbers in series. The second stage must maintain a water flow of at least 40 gallons per minute (“gpm”) when loading acid product or vinyl acetate monomer (“VAM”). SC 6, p. 6.

G. All connectors must be “inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.” SC 1E, p.1.

8.3 Millennium, in its application for Permit 4751, represented that it would not operate its loading system for barges, trucks, and/or railcars at rates exceeding 1,500 gpm.

2. Federal Operating Permit No. O-02326

8.4 On November 25, 2003, the TCEQ issued Federal Operating Permit No. O-02326 (“Permit O-02326”). Permit O-02326 applies to Millennium La Porte and contains the following Special Terms & Conditions (“STC”); Applicable

Requirements (“AR”); and New Source Review Authorization Reference (“NSRAR”):

- A. Permit holders shall comply with the ARs. STC 1(a), (c), p. 1.
- B. Permit holders shall comply with the NSRAR and appropriate permits by rule. STC 13, p. 9.
- C. The NSRAR set forth applicable NSR permits, including Permit 4751. Permit O-02326, p. 62.
- D. The permit holder shall comply with the applicable requirements of 30 TEXAS ADMIN. CODE, Chapter 115, Subchapter H for control of HRVOCs. STC 2, p. 2.

B. Millennium La Porte Investigations

1. April 2005

8.5 On April 25 - 27, 2005, the TCEQ conducted a HRVOC High Emitters Initiative Investigation at Millennium La Porte’s VAM unit. The April 2005 investigation included an on-site investigation and a review of Millennium’s records. The TCEQ investigators identified conditions they believed constituted violations of the applicable laws and regulations:

- A. Based on a records review, Millennium operated 112 pumps that required periodic monitoring. From January 1, 2003 to November 30,

2004, Millennium monitored only 71 of the pumps each quarter (and sometimes as few as 69 on a monthly basis), so that at least 41 pumps were not monitored on either a quarterly or a monthly basis. Millennium failed to conduct at least 943 monthly monitoring events or at least 287 quarterly monitoring events.

B. During 2003 and 2004 Millennium had 6,704 accessible valves in its VAM unit, each required to be monitored at least quarterly. Millennium monitored the following number of valves: 2003 - 1Q (5,311); 2Q (5,311); 3Q (5,280); 4Q (5,280); 2004 - 1Q(5,901); 2Q (5,354); 3Q (5,337); and 4Q (5,572). Millennium Inc. did not conduct at least 10,286 required monitoring events during calendar years 2003 and 2004.

C. During 2003 and 2004 Millennium failed to monitor numerous connectors in its VAM unit, each required to be monitored at least annually. Millennium Inc. failed to monitor 1,536 connectors in 2003 and 1,991 connectors in 2004.

2. September 2005

8.6 On September 9, 2005, the TCEQ conducted an annual Office Permit Compliance Certification Investigation for Millennium La Porte, which included

reviewing Millennium's June 24, 2004 and December 21, 2004 deviation reports (covering the reporting period November 25, 2003 through November 24, 2004). The TCEQ investigator identified conditions he believed constituted violations of the applicable laws and regulations:

- A. Millennium reported that the typical loading rate of barges, trucks, and/or railcars from December 7, 2003 to November 24, 2004 approached 1,800 gpm, in excess of the maximum loading rate of 1,500 gpm represented by Millennium in its Permit 4751 application.
- B. Millennium exceeded its 5.76 lbs/hr VOC emission limit at the thermal oxidizing flare, EPN# QE6801U.
- C. Between November 25, 2003 and November 24, 2004, Millennium vented emissions from 2,714 pressurized railcars directly to the atmosphere.
- D. During the November 25, 2003 to November 24, 2004 compliance period, Millennium failed to maintain a water flow rate of 40 gpm to the Loading Scrubber EPN# AARTSC.
- E. Millennium installed its catalytic oxidizer, EPN# VAMCATOX, on February 5, 2001, but did not conduct a required performance test until September 28, 2004. At that time, Millennium determined that the

VAMCATOX maintained a destruction efficiency of only 74% and emitted 15 pounds per hour of VOCs.

F. Millennium was required to report all deviations occurring between November 25, 2003 and May 25, 2004 in its June 2004 deviation report. Millennium failed to report the following violations:

1. Excessive barge loading rates and excess emissions from the thermal oxidizing flare were not reported until December 21, 2004.
2. Millennium's failure to conduct performance testing or emission testing of, low performance efficiency, and excess emissions from the catalytic oxidizer, EPN# VAMCATOX.

IX.

Millennium La Porte Violations

A. Failure to Monitor Pumps

9.1 Millennium violated Section 382.085 of the TCAA; Permit 4751 SC 1G, 11; Permit O-02326 STC 1,13; 30 TEX. ADMIN. CODE §§ 113.130 (incorporating 40 C.F.R. § 63.163), 116.115(c); and 40 C.F.R. § 63.163(b)(1) by failing to monitor all 112 pumps. The violations continued from January 1, 2003 through November 30, 2004, for a total of at least 943 missed monthly monitoring events. On information

and belief, Millennium committed additional violations before January 1, 2003. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

9.2 Millennium violated Section 382.085 of the TCAA; Permit 4751 SC 1G; Permit O-02326 STC 2; and 30 TEX. ADMIN. CODE §§ 115.354(2)(B), 115.781(b), 116.115(c) by failing to monitor all 112 pumps. Millennium failed to monitor 41 pumps quarterly from January 1, 2003 to November 30, 2004 for a total of at least 287 missed quarterly monitoring events. On information and belief, (1) some or all of the pumps are in HRVOC service and (2) Millennium committed additional violations before January 1, 2003. Each missed monitoring event is a separate violation subject to a civil penalty between \$50 and \$25,000.

9.3 On information and belief, Millennium violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 115.781(c) by failing to conduct required weekly pump inspections for 41 pumps from January 1, 2003 to November 30, 2004. On information and belief Millennium committed additional violations before January 1, 2003. Each missed monitoring event is a separate violation subject to a civil penalty between \$50 and \$25,000.

B. Operating the Loading System at Rates Exceeding Permit Representations

9.4 Millennium violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE §§ 116.116 by loading railcars, trucks, and/or barges at rates exceeding 1,500 gpm as represented in its application for Permit 4751. Each day on which Millennium loaded at rates exceeding 1,500 gpm is a separate violation. Millennium reported that its improper loading operations occurred for an unspecified number of days from December 7, 2003 through November 24, 2004. On information and belief, Millennium also conducted loading operations at rates exceeding 1,500 gpm prior to December 7, 2003 and after November 24, 2004. Each day of loading in excess of 1,500 gpm is a violation subject to a civil penalty between \$50 and \$25,000.

C. Excess Emissions During Barge Loading Operations

9.5 Millennium violated Section 382.085 of the TCAA; Permit 4751, GC 8; Permit O-02326 STC 13; and 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 116.116(a), 122.143(4) by loading barges in excess of 1,500 gpm as represented in the application for Permit 4751 which caused excess emissions from the thermal oxidizing flare, EPN# QE6801U. At a typical 1,800 gpm loading rate, Millennium determined that it emitted 6.52 lbs/hr of VOC, exceeding the limit of 5.76 lbs/hr set out in the MAERT of Permit 4751. Each day on which Millennium loaded barges at

rates greater than 1,500 gpm generated excess VOC emissions and is a violation. In addition, the thermal oxidizing flare, EPN# QE6801U, has an annual VOC emission limit of 1.02 tons. On information and belief, Millennium exceeded this limit. Each day Millennium operated the flare after reaching the annual VOC limit is a violation. Each violation is subject to a civil penalty between \$50 and \$25,000.

D. Failure to Monitor Accessible Valves

9.6 Millennium violated Section 382.085 of the TCAA; Permit 4751 SC 1F, 11; Permit O-02326 STC 1,13; 30 TEX. ADMIN. CODE §§ 113.130 (incorporating 40 C.F.R. § 63.168), 116.115(c); and 40 C.F.R. § 63.168 by failing to monitor all accessible valves in the VAM unit. Millennium failed to monitor the following number of valves each quarter: 2003 - 1Q (1,393); 2Q (1,393); 3Q (1,424); 4Q (1,424); 2004 - 1Q (803); 2Q (1,350); 3Q (1,367); 4Q (1,132). Millennium failed to conduct at least 10,286 required monitoring events, each of which is a violation. On information and belief, Millennium committed additional violations by missing monitoring events before January 1, 2003. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

9.7 Millennium violated Section 382.085 of the TCAA; Permit 4751 SC 1F; Permit O-02326 STC 2; and 30 TEX. ADMIN. CODE §§ 115.354(2), 115.781(b), 116.115(c) by failing to monitor all accessible valves in the VAM unit. Millennium

failed to monitor the following number of valves each quarter: 2003 - 1Q (1,393); 2Q (1,393); 3Q (1,424); 4Q (1,424); 2004 - 1Q (803); 2Q (1,350); 3Q (1,367); 4Q (1,132). Millennium failed to conduct at least 10,286 required monitoring events, each of which is a violation. On information and belief, (1) some or all of the valves are in HRVOC service and (2) Millennium committed additional violations by missing monitoring events before January 1, 2003. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

E. Failure to Monitor Connectors

9.8 Millennium violated Section 382.085 of the TCAA; Permit 4751 SC 11; 30 TEX. ADMIN. CODE §§ 113.130 (incorporating 40 C.F.R. § 63.174), 116.115(c); and 40 C.F.R. § 63.174 by failing to monitor all connectors in the VAM unit annually. During 2003 and 2004, Millennium failed to conduct at least 3,527 required monitoring events, each of which is a violation. On information and belief, Millennium committed additional violations by missing monitoring events prior to January 1, 2003. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

9.9 Millennium violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 115.781(b) by failing to monitor all connectors in the VAM unit on a quarterly basis for the last three calendar quarters of 2004. On information and

belief, some or all of the connectors were in HRVOC service. During 2004, Millennium failed to conduct at least 5,973 (three for each of the 1,991 connectors) required monitoring events, each of which is a violation subject to a civil penalty between \$50 and \$25,000.

9.10 On information and belief, Millennium violated Section 382.085 of the TCAA; Permit 4751 SC 1E; and 30 TEX. ADMIN. CODE § 116.115(c) by failing to inspect each week by visual, audible, and/or olfactory means all connectors in the VAM unit. During 2003 and 2004, Millennium failed to identify in its records at least 3,527 connectors and is believed not to have conducted the required weekly walk-through inspections for those connectors. Millennium is believed to have failed to conduct inspections for at least 104 weeks. On information and belief, this problem existed prior to January 1, 2003, and Millennium missed additional monitoring events. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

F. Failure to Vent Railcar Emissions to a Control Device

9.11 Millennium violated Section 382.085 of the TCAA; Permit 4751 GC 8; Permit O-02326 SC 13; and 30 TEX. ADMIN. CODE §§ 115.212(a), 115.541(a)(2), 116.115(b)(2)(F), 122.143(4) by failing to vent railcar emissions to a control device. From November 25, 2003 through November 24, 2004 Millennium vented 2,714

railcars directly to the atmosphere, each of which constitutes a separate violation. On information and belief, Millennium continued the practice of venting railcars to the atmosphere for a short while after November 24, 2004, and prior to November 25, 2003 had always vented railcars to the atmosphere. Each venting to the atmosphere is a separate violation. Millennium committed at least 2,714 violations, each of which is subject to a civil penalty between \$50 and \$25,000.

G. Failure to Maintain Loading Scrubber Second Stage Flow Rate

9.12 Millennium violated Section 382.085 of the TCAA ; Permit 4751 SC 6; Permit O-02326 STC 13, NSRAR p. 62; and 30 TEX. ADMIN. CODE §§116.115(c), 122.143(4) by failing to maintain a minimum water flow rate of 40 gpm to the second stage of the loading scrubber during railcar and truck loading operations. The violations continued for an unspecified number of days from November 25, 2003 through February 23, 2005. During the semi-annual reporting period ended November 24, 2004, Millennium admitted that it conducted loading operations on at least 105 days. On information and belief, Millennium committed additional violations prior to November 25, 2003. Each day Millennium operated the loading scrubber without the required flow rate is a separate violation subject to a civil penalty between \$50 and \$25,000.

H. Excess Emissions from the Catalytic Oxidizer

9.13 Millennium violated Section 382.085 of the TCAA; Permit 4751 GC 8, MAERT; Permit O-02326 STC 13, NSRAR p. 62; and 30 TEX. ADMIN. CODE §§ 115.121(a), 115.122(a), 116.115(b)(2)(F), 122.143(4) by operating the catalytic oxidizer, EPN# VAMCATOX, at a destruction efficiency of less than 90% and emitting 15 lbs/hr of VOCs in violation of the permit limits. Millennium failed to conduct an initial performance test, and the results of the test conducted on September 28, 2004 are presumed to represent operations since installation of the oxidizer on February 5, 2001. The violation continued from day-to-day until remedied, for a total of at least 1,331 violations, each of which is subject to a civil penalty between \$50 and \$25,000.

9.14 Millennium violated Section 382.085 of the TCAA, and 30 TEX. ADMIN. CODE §§ 115.121(a), 115.122(a) by operating catalytic oxidizer, EPN# VAMCATOX, without conducting an initial performance test. Millennium committed daily violations from February 5, 2001 to September 28, 2004, for a total of 1,331 violations, each subject to a civil penalty between \$50 and \$25,000.

I. Failure to Report Deviations from Permit O-02326

9.15 Millennium violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 122.145(2) by failing to report numerous instances of deviations

from Permit O-02326 that occurred from November 25, 2003 through May 24, 2004. These deviations were eventually submitted on December 21, 2004. Each day that Millennium failed to submit a complete and accurate list of deviations is a separate violation. Millennium has committed at least 180 violations, each of which is subject to a civil penalty between \$50 and \$25,000.

X.

Equistar La Porte Background

10.1 Defendants Equistar and Millennium own and operate a chemical facility at 1515 Miller Cut Off Road, Deer Park, Texas 77536 (“Equistar La Porte”).

A. Permits

1. Permit No. 18978/TX-PSD-752M3

10.2 On or about July 14, 2000 and December 6, 2002, the TCEQ issued revised Permit No. 18978/PSD-TX-752M3 (“Permit 18978”)² according to the New Source Review provisions of the TCAA. Permit 18978 applies to the Olefins QE-1 unit in the Equistar La Porte Facility and contains the following SCs:

- A. Accessible valves shall be monitored by leak checking for fugitive emissions at least quarterly with an approved gas analyzer. SC 13F, p. 5 (2000: SC 7F, p. 2).

²The 2000 version of the Permit is numbered Permit No. 18978/PSD-TX-752M2 [emphasis added].

- B. All pump and compressor seals shall be monitored with an approved gas analyzer at least quarterly. SC 13G, p. 6 (2000: SC 7G, p.2).
- C. The Facility is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 60, subparts A [40 C.F.R. §§ 60.1 - .19]; Db [40 C.F.R. §§ 60.40b - .49b]; Kb [40 C.F.R. §§ 60.110b - .117b]; VV [40 C.F.R. §§ 60.480 - .489]; NNN, [40 C.F.R. §§ 60.660 - .668]; & RRR [40 C.F.R. §§ 60.700 - .708]. SC 5, p. 1.
- D. The Facility is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 61, subparts A [40 C.F.R. §§ 61.1 - .19]; J [40 C.F.R. §§ 61.110 - .112]; V [40 C.F.R. §§ 61.240 - .247]; & FF [40 C.F.R. §§ 61.340 - .358]. SC 6, p. 2.
- E. Connectors must be inspected weekly by visual, audible, and/or olfactory means by operating personnel. SC 13E, p.5 (2000: SC 7E, p. 2).
- F. In addition to the weekly physical inspection, connectors shall be monitored annually with an appropriate gas analyzer. SC 14, p. 7 (2000: SC 8, p.3).

- G. Emission rates must not exceed the MAERT attached to the permit. GC 1, SC 1, pp. 1 - 2; *see also* 30 TEX. ADMIN. CODE § 116.115(b)(2)(F).
- H. The MAERT permits the following emissions:
1. For the ARU flare, EPN# QE3050B, not more than 12.5 lbs/hr of VOC.
 2. For the ARU flare, EPN# QE3050B, not more than 15.1 lbs/hr of CO.
 3. For the ARU flare, EPN# QE3050B, not more than 2.9 lbs/hr of NO_x.
 4. For the elevated flare, EPN# QE8050B, not more than 117.0 lbs/hr of VOC.
 5. For the elevated flare, EPN# QE8050B, not more than 181.0 lbs/hr of CO.
 6. For the elevated flare, EPN# QE8050B, not more than 52.0 lbs/hr of NO_x.
- I. CO from the 10 pyrolysis furnaces, EPN# QE1001B through QE1010B, and 2 boilers, EPN# QE5802UA & QE5802UB, shall not exceed an hourly average of 0.035 pounds per million British thermal

units (“lbs/MMBtu”). SC 3, p. 1.

- J. Flares must comply with the minimum net heating value for gas required by 40 C.F.R. § 60.18. SC 11A, p. 4 (2000: SC 12, p. 7).

2. Permit No. 19109

10.3 On June 2, 2000; April 19, 2002; and January 21, 2004, the TCEQ issued revised Permit No. 19109 (“Permit 19109”) according to the New Source Review provisions of the TCAA. Permit 19109 applies to the Q-1 Gas Phase Polyethylene Unit in the Equistar La Porte Facility and contains the following GCs and SCs:

- A. Accessible valves must be monitored quarterly with an approved gas analyzer. SC 12F, p. 6 (2000 & 2002: SC 9F, p. 3).
- B. All pump and compressor seals must be monitored quarterly with an approved gas analyzer. SC 12G, p. 7 (2000 & 2002: SC 9G, p.3).
- C. The Facility must comply with all applicable EPA regulations found in 40 C.F.R. part 60, subparts A [40 C.F.R. §§ 60.1 - .19]; VV [40 C.F.R. §§ 60.480 - .489]; & DDD [40 C.F.R. §§ 60.560 - .566]. SC 5, p. 2 (2000 & 2002: SC 4, p.1).

- D. Emission rates must not exceed the MAERT attached to the permit. GC 8, p. 1; SC 1, 10, pp. 1, 5 (2000 & 2002: GC 8; p. 1; SC 1, p. 1); *see also* 30 TEX. ADMIN. CODE § 116.115(b)(2)(F).
- E. Connectors must be inspected weekly by visual, audible, and/or olfactory means. SC 12E, p.6 (2000 & 2002: SC 9E, p. 3).
- F. The MAERT permits the following emissions:
1. For the flare, EPN# HSFLARE, not more than 6.75 lbs/hr of VOC.³
 2. For the flare, EPN# HSFLARE, not more than 2.66 lbs/hr of CO.
 3. For the flare, EPN# HSFLARE, not more than 0.52 lbs/hr of NO_x.
- G. The MAERT does not list or authorize emissions from the Q-1 Polyethylene Unit reactor.

3. Federal Operating Permit No. O-02223

10.4 On June 3, 2003, the TCEQ issued Federal Operating Permit No. O-02223 (“Permit O-02223”), under the provisions of the TCAA implementing the federal operating permits program. Permit O-02223 applies to the olefins QE-1 unit in the Equistar La Porte Facility and contains the following STCs, ARs, and NSRAR:

³The EPN# HSFLARE emission limits for VOC, CO, and NO_x are from the 2000 version of Permit 19109. By 2004, the limits had been reduced.

- A. Permit holders must comply with the ARs. STC 1(A), (C), p. 1.
- B. Permit holders must comply with the NSRAR and appropriate permits by rule. STC 13, p. 7.
- C. The NSRAR set forth applicable NSR permits, including Permit 4751. Permit O-02223, p. 47.

4. Federal Operating Permit No. O-01606

10.5 On February 27, 2004, the TCEQ issued Federal Operating Permit No. O-01606 (“Permit O-01606”), under the provisions of the TCAA implementing the federal operating permits program. Permit O-01606 applies to the Q-1 Gas Phase Polyethylene Unit in the Equistar La Porte Facility and contains the following SCs, ARs, and NSRAR:

- A. Permit holders must comply with the ARs. STC 1(A), (C), p. 1.
- B. Permit holders must comply with the NSRAR and appropriate permits by rule. STC 9, p. 6.
- C. The NSRAR set forth applicable NSR permits, including Permit 19109. Permit O-01606, p. 29.

B. Investigations

1. July 2004

10.6 On July 13, 2004, the TCEQ conducted a Comprehensive Compliance Site Permit Compliance Certification Investigation of the Olefins QE-1 Unit at the Equistar La Porte Facility. The July 2004 investigation was primarily a review of Equistar's records. The TCEQ investigator identified conditions she believed constituted violations of the applicable laws and regulations:

- A. In its deviation report for the period June 3, 2003 to November 30, 2003, Equistar reported that 2,570 valves were not in its records and had not been monitored.
- B. In its deviation report for the period December 1, 2003 to May 31, 2004, Equistar reported that an additional 981 valves were not in its records.
- C. In its deviation report for the period December 1, 2003 to May 31, 2004, Equistar reported that 2,189 valves were not monitored during the period.
- D. In its deviation report for the period December 1, 2003 to May 31, 2004, Equistar reported that it discovered 2,476 connectors that were not in its database and had not been monitored.

- E. In its deviation report for the period December 1, 2003 to May 31, 2004, Equistar reported that four leaking valves were monitored quarterly rather than monthly. The report also indicated that an additional sixteen valves had been similarly treated for the prior deviation report period of June 3, 2003 to November 20, 2003.
- F. In its deviation report for the period June 3, 2003 to November 30, 2003, Equistar reported that one valve had been on the delay of repair list but was not monitored monthly. In its deviation report for the period December 1, 2003 to May 31, 2004, Equistar reported that five valves had been on the delay of repair list but were not monitored monthly.
- G. In its revised deviation report for the period June 3, 2003 to November 30, 2003, Equistar reported that 316 valves had been incorrectly classified in its records as “difficult to monitor” and had been reclassified as “accessible.”
- H. In its revised deviation report for the period June 3, 2003 to November 30, 2003, Equistar reported that of the 316 valves that had been improperly classified as “difficult to monitor,” 163 had been monitored quarterly, not monthly.

- I. In its deviation report for the period December 1, 2003 to May 31, 2004, Equistar reported that 162 valves, seven pressure relief valves, and 176 connectors had been classified as only subject to state regulations when they were also subject to federal regulations.
- J. In its deviation report for the period June 3, 2003 to September 30, 2003, Equistar reported that one pump was not listed in the fugitive components records and had not been monitored during the period.
- K. In its deviation report for the period April 1, 2003 to June 30, 2003, Equistar admitted that nine of the pyrolysis furnaces exceeded an hourly average for CO of 0.035 lb/MMBtu 200 times.
- L. In its deviation report for the period April 1, 2003 to June 30, 2003, Equistar admitted that two boilers exceeded an hourly average for CO of 0.035 lb/MMBtu 73 times.
- M. In its deviation report for the period July 1, 2003 to September 30, 2003, Equistar admitted that nine of the pyrolysis furnaces exceeded an hourly average for CO of 0.035 lb/MMBtu 114 times.
- N. In its deviation report for the period July 1, 2003 to September 30, 2003, Equistar admitted that 2 boilers exceeded an hourly average for CO of 0.035 lb/MMBtu 29 times.

- O. During the deviation reporting period from June 3, 2003, through May 31, 2004, Equistar failed to maintain the required minimum heating value of gas to the elevated flare, EPN# QE8050B on sixteen different dates.
- P. In its deviation report for the period June 3, 2003 through November 30, 2003, Equistar did not disclose that it had failed to maintain the required minimum heating value of gas to the elevated flare, EPN# QE8050B on six dates. Equistar admitted this failure in its deviation report of June 30, 2004.
- Q. Equistar failed to timely submit accurate CEMS semiannual reports for the first semiannual period of 2003. Such report was due on or before July 30, 2003, but was not submitted until March 24, 2004. However, Equistar included inaccurate information in that report and did not submit an accurate report until August 11, 2004. The report was therefore 377 days late.
- R. Equistar failed to timely submit accurate CEMS semiannual reports for the second semiannual period of 2003. That report was due on or before January 30, 2004, but was not submitted until March 24, 2004. However, Equistar included inaccurate information in that report and

did not submit an accurate report until August 11, 2004. The report was therefore 194 days late.

2. May 2005

10.7 On May 2 - 23, 2005, the TCEQ conducted a Comprehensive Compliance Office Permit Compliance Certification Investigation of the Q-1 Unit at Equistar La Porte. The May 2005 investigation was primarily a review of Equistar's records. The TCEQ investigator identified conditions she believed constituted violations of the applicable laws and regulations:

A. In its September 2, 2004 deviation report covering the period February 27, 2004 to March 31, 2004, Equistar admitted failing to monitor 209 valves.

B. In its September 24, 2004 deviation report covering the period February 27, 2004 to April 26, 2004, Equistar admitted failing to include the required information in its fugitive component database for 209 valves.

C. Emission Events

10.8 On September 26, 2003, during a 12 minute period, Equistar released twenty pounds of VOCs from the ARU flare, EPN# QE3050B, in excess of its permit limit of 12.5 lbs/hr.

10.9 On October 9, 2003, during a 50 minute period, Equistar released 75 pounds of VOCs from the ARU flare, EPN# QE3050B, in excess of its permit limit of 12.5 lbs/hr.

10.10 On December 11 - 12, 2003, during a 27 hour period, Equistar released more than of 7,500 pounds of VOCs from the elevated flare, EPN# QE8050B, in excess of the 117 lbs/hr emission limit.

10.11 On December 11 - 12, 2003, during a 27 hour period, Equistar released more than of 10,000 pounds of CO from the elevated flare, EPN# QE8050B, in excess of the 181 lbs/hr emission limit.

10.12 On December 11 - 12, 2003, during a 27 hour period, Equistar released about 2,000 pounds of NO_x from the elevated flare, EPN# QE8050B, in excess of the 52 lbs/hr emission limit.

10.13 On November 4 - 5, 2002, during a 28 hour period, Equistar released more than of 1,300 pounds of VOCs from the flare, EPN# HSFLARE, in excess of the 6.75 lbs/hr emission limit.

10.14 On November 4 - 5, 2002, during a 28 hour period, Equistar released more than of 700 pounds of CO from the flare, EPN# HSFLARE, in excess of the 2.66 lbs/hr emission limit.

10.15 On November 4 - 5, 2002, during a 28 hour period, Equistar released more than of 130 pounds of NO_x from the flare, EPN# HSFLARE, in excess of the 0.52 lbs/hr emission limit.

10.16 On February 1 - 2, 2004, during a 21 hour period, Equistar released more than of 100 pounds of CO from the flare, EPN# HSFLARE, in excess of the 0.52 lbs/hr emission limit.

10.17 On February 1 - 2, 2004, during a 21 hour period, Equistar released almost 10,000 pounds of VOCs from the emergency vents at the Q-1 polyethylene reactor. Since this emission point is not authorized, all the emissions were unauthorized.

10.18 On May 28 - 29, 2004, during a 24 hour period, Equistar released over 14,000 pounds of VOCs from the elevated flare, EPN# QE8050B, in excess of the 117.0 lbs/hr emission limit.

10.19 On May 28 - 29, 2004, during a 24 hour period, Equistar released over 18,000 pounds of CO from elevated flare, EPN# QE8050B, in excess of the 181.0 lbs/hr emission limit.

10.20 On May 28 - 29, 2004, during a 24 hour period, Equistar released over 3,500 pounds of NO_x from elevated flare, EPN# QE8050B, in excess of the 52.0 lbs/hr emission limit.

10.21 On May 28 - 29, 2004, during a nine hour period, Equistar released over 500 pounds of VOCs from the ARU flare, EPN# QE3050B, in excess of the 12.5 lbs/hr emission limit.

10.22 On May 28 - 29, 2004, during a nine hour period, Equistar released almost 300 pounds of CO from the ARU flare, EPN# QE3050B, in excess of the 15.1 lbs/hr emission limit.

10.23 On May 28 - 29, 2004, during a nine hour period, Equistar released over 50 pounds of NO_x from the ARU flare, EPN# QE3050B, in excess of the 2.9 lbs/hr emission limit.

10.24 On June 23, 2004, during a period of nearly six hours, Equistar released over 9,000 pounds of VOCs from the elevated flare, EPN# QE8050B, in excess of the 117.0 lbs/hr emission limit.

10.25 On June 23, 2004, during a period of nearly six hours, Equistar released over 9,000 pounds of CO from elevated flare, EPN# QE8050B, in excess of the 181.0 lbs/hr emission limit.

10.26 On June 23, 2004, during a period of nearly six hours, Equistar released over 1,900 pounds of NO_x from elevated flare, EPN# QE8050B, in excess of the 52.0 lbs/hr emission limit.

10.27 On June 3, 2004, during an eight hour period, Equistar released over 140 pounds of VOCs from the ARU flare, EPN# QE3050B, in excess of the 12.5 lbs/hr emission limit.

10.28 On July 4 - 5, 2004, during a 22 hour period, Equistar released over 1,300 pounds of VOCs from the ARU flare, EPN# QE3050B, in excess of the 12.5 lbs/hr emission limit.

10.29 On July 4 - 5, 2004, during a 22 hour period, Equistar released over 800 pounds of CO from the ARU flare, EPN# QE3050B, in excess of the 15.1 lbs/hr emission limit.

10.30 On July 4 - 5, 2004, during a 22 hour period, Equistar released over 150 pounds of NO_x from the ARU flare, EPN# QE3050B, in excess of the 2.9 lbs/hr emission limit.

XI.

Equistar La Porte Violations

A. Failure to Monitor Accessible Valves

11.1 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 5, 6, 13F; Permit O-02223 STC 1, 13; 30 TEX. ADMIN. CODE §§ 101.20, 116.115(c); and 40 C.F.R. §§ 60.482-7, 61.242-7 by failing to monitor valves as described below:

A. During the June 3, 2003 to November 30, 2003 reporting period, 2,570

accessible valves in the VAM unit were not listed in Equistar's database and were therefore not monitored on a monthly basis, for a total of 15,420 missed monitoring events.

- B. During the June 3, 2003 to November 30, 2003 reporting period, 163 valves, improperly classified by Equistar as "difficult to monitor," had been monitored quarterly rather than monthly, for a total of 652 missed monitoring events.
- C. For the June 3, 2003 to November 30, 2003 reporting period, 981 additional valves were not in the database and were not monitored. Therefore, Equistar failed to monitor these 981 valves for at least six months, for a total of 5,886 violations.
- D. Equistar also monitored an additional 2,189 valves quarterly, rather than monthly, from at least December 1, 2003 to to May 31, 2004, resulting in 8,756 violations.
- E. For the June 3, 2003 to November 30, 2003, reporting period, one valve on the delay of repair list was not monitored monthly. On information and belief, this valve was monitored quarterly rather than monthly, for a total of four missed monitoring events.
- F. For the December 1, 2003 to May 31, 2004 reporting period, five

valves on the delay of repair list were not monitored monthly. On information and belief, these valves were monitored on a quarterly basis, for a total of twenty missed monitoring events.

Equistar therefore failed to conduct at least 30,738 monitoring events, each of which is a violation. On information and belief, Equistar committed additional violations prior to June 3, 2003. Specifically, Plaintiff alleges that components reported as not in Equistar's database had never been monitored. Therefore, Equistar committed a violation for each of those components for each monitoring period since installation. Each violation is subject to a civil penalty between \$50 and \$25,000.

11.2 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 5; Permit O-01606, STC 1, 9; and 30 TEX. ADMIN. CODE §§ 115.354, 116.116(c) by failing to conduct required valve monitoring. During the June 3, 2003 to November 30, 2003 reporting period, 2,570 accessible valves in the VAM unit were not listed in Equistar's database and therefore were not monitored quarterly, resulting in 5,140 missed monitoring events. Between December 1, 2003 and May 31, 2004, an additional 2,189 valves were not monitored quarterly, resulting in 4,378 missed monitoring events. Thus, Equistar failed to conduct at least 9,518 required monitoring events. On information and belief, this problem existed prior to June 3, 2003, and Equistar missed additional monitoring events. Specifically, Plaintiff

alleges that components reported as not in Equistar's database had never been monitored. Therefore, Equistar committed a violation for each of those components for each monitoring period since installation. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

11.3 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 5, 6, 13; Permit O-02223 STC 1, 13; 30 TEX. ADMIN. CODE §§ 101.20, 116.115(c); and 40 C.F.R. §§ 60.482-7, 61.242-7 during the June 3, 2003 to November 30, 2003 reporting period, by monitoring sixteen previously leaking valves quarterly rather than monthly, resulting in 64 missed monitoring events. In addition, during the December 1, 2003 to May 31, 2004 reporting period, four previously leaking valves were monitored quarterly rather than monthly, resulting in sixteen missed monitoring events. Equistar failed to conduct at least 80 required monitoring events. On information and belief, this problem existed prior to June 3, 2003, and Equistar missed additional monitoring events. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

11.4 Equistar violated Section 382.085 of the TCAA; Permit 19109 SC 5; Permit O-01606 STC 1, 9; 30 TEX. ADMIN. CODE §§ 101.20, 116.115(c); and 40 C.F.R. § 60.482-7 by failing to conduct required monthly monitoring of 209 valves until the second quarter of 2004. On information and belief, these valves were never

monitored and Equistar committed a violation for each valve for each monitoring period from installation through March 31, 2004. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

11.5 Equistar violated Section 382.085 of the TCAA; Permit 19109 SC 5 & 12F; and 30 TEX. ADMIN. CODE §§ 115.354, 115.781, 116.115(c) by failing to conduct required quarterly monitoring of 209 valves until the second quarter of 2004. On information and belief, these valves were never monitored and Equistar committed a violation for each valve for each monitoring period from installation through March 1, 2004. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

B. Failure to Maintain Complete and Accurate Component Records

11.6 Equistar violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 115.356 by failing to include and/or accurately list information concerning valves and other components in its records, as more particularly described below:

- A. For the reporting period June 3, 2003 to November 30, 2003 Equistar's component database did not list or provide the required information for 2,570 accessible valves.

- B. For the reporting period December 1, 2003 to May 31, 2004 Equistar's component database did not list or provide the required information for 981 accessible valves.
- C. For the reporting period June 3, 2003 to November 30, 2003 Equistar's component database inaccurately classified 316 accessible valves as "difficult to monitor."
- D. For the reporting period December 1, 2003 to May 31, 2004 Equistar's records inaccurately described 162 valves and seven pressure relief valves as being subject only to state rules or permits and failed to identify them as subject to federal rules.
- E. For the reporting period June 3, 2003 to September 30, 2003 Equistar's records failed to include one pump.
- F. For the reporting period February 27, 2004 to March 31, 2004 Equistar's records failed to include 209 valves.
- G. For the reporting period December 1, 2003 to May 31, 2004 Equistar's records failed to include 2,476 connectors.

Equistar failed to include, or accurately describe, 6,722 components in its fugitives records as required by the applicable rules, each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

C. Failure to Monitor Pump

11.7 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 5, 6; Permit O-02223 STC 1, 13; 30 TEX. ADMIN. CODE §§ 101.20, 116.115(c); and 40 C.F.R. §§ 60.482-2 by failing to conduct required monthly monitoring of a pump during the June 3, 2003 to September 30, 2003 reporting period. Equistar missed four monitoring events. On information and belief, this pump was never monitored and Equistar has committed a violation for each monitoring period from installation through September 30, 2003. Each missed monitoring event is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.8 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 13G; Permit O-02223, STC 1, 13; and 30 TEX. ADMIN. CODE §§ 115.354, 116.115(c) by failing to conduct the required quarterly monitoring of a pump during the June 3, 2003 to September 30, 2003 reporting period. Equistar missed one monitoring event. On information and belief, this pump was never monitored and Equistar has committed a violation for each monitoring period from installation through September 30, 2003. Each missed monitoring event is a separate violation subject to a civil penalty between \$50 and \$25,000.

D. Failure to Monitor Connectors

11.9 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 14; Permit O-02223 STC 1, 13; and 30 TEX. ADMIN. CODE § 116.115(c) by failing to conduct required annual monitoring of 2,476 connectors during the June 3, 2003 to May 31, 2004 deviation reporting period. On information and belief, these connectors were never monitored and Equistar has committed a violation for each monitoring period for each connector from installation through May 31, 2004. Each missed monitoring event is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.10 Equistar violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 115.781(b)(3) by failing to conduct quarterly monitoring of 2,476 connectors with the first monitoring event required to have been completed on or before March 31, 2004. Each missed monitoring event is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.11 On information and belief, Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 13E; and 30 TEX. ADMIN. CODE § 116.115(c) by failing to inspect each week by visual, audible, and/or olfactory means all connectors in the VAM unit. During the annual deviation reporting period of June 3, 2004, Equistar failed to identify in its records at least 2,300 connectors and is believed not to have

conducted the required weekly walk-through inspections for these connectors. Equistar is believed to have failed to conduct the inspections for at least 51 weeks. On information and belief, this problem existed prior to June 3, 2003, and Equistar missed additional monitoring events. Each missed monitoring event is a separate violation subject to a civil penalty between \$50 and \$25,000.

E. Excess CO Emissions from Pyrolysis Furnaces and Boilers

11.12 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 3; and 30 TEX. ADMIN. CODE § 116.115(c) by exceeding the hourly average CO limit of 0.035 lbs/MMBtu at least 416 times, each of which is a violation subject to a civil penalty between \$50 and \$25,000.

F. Failure to Maintain Net Heating Value of Gas to Elevated Flare

11.13 Equistar violated Section 382.085 of the TCAA; Permit 18978 SC 5, 11A; Permit O-02223 STC 13; 30 TEX. ADMIN. CODE §§ 101.20, 116.115(c); and 40 C.F.R. §§ 60.18(c)(3)(ii) by failing to maintain a minimum net heating value of 300 Btu/scf for gas supply to the elevated flare, EPN# QE8050, on at least sixteen different occasions during the period June 3, 2003 to May 31, 2004. Each failure to maintain a minimum heating value is a separate violation subject to a civil penalty between \$50 and \$25,000.

G. Failure to Report Deviations from Permit O-02223

11.14 Equistar violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 122.145(2) by failing to report numerous instances of deviations from Permit O-02223 that occurred from June 3, 2003, to November 30, 2003. These deviations were eventually submitted on June 30, 2004. Each day that Equistar failed to submit a complete and accurate list of deviations is a separate violation. Equistar has committed at least 182 violations, each of which is subject to a civil penalty between \$50 and \$25,000.

H. Failure to Timely Submit Semiannual CEMS Reports

11.15 Equistar violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 117.219(d) by failing to timely submit an accurate semiannual CEMS performance report. For the first semiannual period of 2003, Equistar submitted the report 377 days late and for the second semiannual period, submitted the report 194 days late, for a total of 571 days of violation. Each day is a violation subject to a civil penalty between \$50 and \$25,000.

I. Excess Emission Events

11.16 Equistar violated Section 382.085 of the TCAA; Permit 18978 GC 8, MAERT; and 30 TEX. ADMIN. CODE § 116.115(b)(2)(F) by exceeding the hourly VOC emission rates for the ARU flare, EPN# QE3050B, on September 26, 2003, and

October 9, 2003, each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.17 Equistar violated Section 382.085 of the TCAA; Permit 18978 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly VOC, CO, and NO_x emission rates for the elevated flare, EPN# QE8050B, on December 11 - 12, 2003. This constitutes three permit violations on two separate days, for a total of six days of violation, each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.18 Equistar violated Section 382.085 of the TCAA; Permit 19109 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly VOC, CO, and NO_x emission rates for the flare, EPN# HSFLARE, on November 4 - 5, 2002. This constitutes three permit violations on two separate days, for a total of six days of violation, each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.19 Equistar violated Section 382.085 of the TCAA; Permit 19109 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly CO

emission rate for the flare, EPN# HSFLARE, on February 1 - 2, 2004. This constitutes one day of violation subject to a civil penalty between \$50 and \$25,000.⁴

11.20 Equistar violated Section 382.085 of the TCAA; Permit 19109 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by emitting VOCs from the emergency vents in the Q1 polyethylene reactor without authorization to do so. The violation occurred on February 1 - 2, 2004 and lasted approximately 21 hours. This constitutes one day of violation subject to a civil penalty between \$50 and \$25,000.⁵

11.21 Equistar violated Section 382.085 of the TCAA; Permit 18978 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly VOC, CO, and NO_x emission rates for the ARU flare, EPN# QE3050B, for nine hours on May 28 - 29, 2004. This constitutes three permit violations each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.22 Equistar violated Section 382.085 of the TCAA; Permit 18978 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly VOC, CO, and NO_x emission rates for the elevated flare, EPN# QE8050B, for 24

⁴Although the violation spanned two calendar days, the event lasted less than 24 hours. The State elects to treat the violation as one day of violation rather than two days.

⁵Although the violation spanned two calendar days, the event lasted less than 24 hours. The State elects to treat the violation as one day of violation rather than two days.

hours on May 28 - 29, 2004. This constitutes three permit violations each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.23 Equistar violated Section 382.085 of the TCAA; Permit 18978 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly VOC, CO, and NO_x emission rates for the elevated flare, EPN# QE8050B, for six hours on June 23, 2004. This constitutes three permit violations each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

11.24 Equistar violated Section 382.085 of the TCAA; Permit 18978 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly VOC emission rate for the ARU flare, EPN# QE3050B, for nearly eight hours on June 23, 2004. This constitutes one permit violation subject to a civil penalty between \$50 and \$25,000.

11.25 Equistar violated Section 382.085 of the TCAA; Permit 18978 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the hourly VOC, CO, and NO_x emission rates for the ARU flare, EPN# QE3050B, for 22 hours on July 4 -5, 2004. This constitutes three permit violations each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.⁶

⁶Although the violation spanned two calendar days, the event lasted less than 24 hours. The State elects to treat the violation as one day of violation rather than two days.

XII.
Channelview Background

12.1 Equistar owns and operates a chemical facility at 8280 Sheldon Road, Channelview, Texas 77530 (“Channelview”).

A. Permits

1. Permit No. 1768

12.2 On September 15, 1998, the TCEQ issued revised Permit No. 1768 (“Permit 1768”). Permit 1768 applies to the Olefins Plant #1 at the Channelview Facility and contains the following GCs and SCs:

A. The Facility is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 60, subparts A [40 C.F.R. §§ 60.1 - .19]; K [40 C.F.R. §§ 60.110 - .113]; Ka [40 C.F.R. §§ 60.110a - .115a]; & Kb [40 C.F.R. §§ 60.110b - .117b]. SC 1, p. 1.

B. The Facility is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 61, subparts A [40 C.F.R. §§ 61.1 - .19]; J [40 C.F.R. §§ 61.110 - .112]; V [40 C.F.R. §§ 61.240 - .247]; Y [40 C.F.R. §§ 61.270 - .277] & FF [40 C.F.R. §§ 61.340 - .358]. SC 2, p. 1.

- C. The maximum allowable emission rates are set in the MAERT attached to the permit. GC 8, p. 1; 30 TEX. ADMIN. CODE § 116.115(b)(2)(F).
- D. The MAERT permits the following emissions:
1. For the OP1 cooling tower, EPN# 38E11, not more than 0.08 lbs/hr and 0.34 tpy of benzene.
 2. For the OP1 cooling tower, EPN# 38E11, not more than 7.60 lbs/hr and 33.40 tpy of VOCs.
 3. For the tank TK-3912, EPN# 39E12, not more than 2.62 lbs/hr of VOCs and 1.31 lbs/hr of benzene.
 4. For the OP1 flare, EPN# 38E01, not more than 1,664.94 lbs/hr of VOCs.
 5. For the OP1 flare, EPN# 38E01, not more than 111.5 lbs/hr of NO_x.
 6. For the OP1 flare, EPN# 38E01, not more than 805 lbs/hr of CO.
 7. The condensate pot for Reboiler E-36118B is not an authorized emission point in Permit 1768.

2. Permit No. 2933

12.3 On October 20, 1998; March 13, 2001; and April 22, 2002, the TCEQ issued revised Permit No. 2933 (“Permit 2933”). Permit 2933 applies to the Olefins Plant #2 at the Channelview Facility and contains the following GCs and SCs:

- A. The Facility is required to comply with all of the applicable EPA Regulations found in 40 C.F.R. part 60, subparts A [40 C.F.R. §§ 60.1 - .19]; D [40 C.F.R. §§ 60.40 - .46]; K [40 C.F.R. §§ 60.110 - .113]; Ka [40 C.F.R. §§ 60.110a - .115a]; Kb [40 C.F.R. §§ 60.110b - .117b], & VV [40 C.F.R. §§ 60.480 - .489]. SC 1, p. 1.
- B. The Facility is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 61, subparts A [40 C.F.R. §§ 61.1 - .19]; J [40 C.F.R. §§ 61.110 - .112]; V [40 C.F.R. §§ 61.240 - .247]; Y [40 C.F.R. §§ 61.270 - .277] & FF [40 C.F.R. §§ 61.340 - .358]. SC 2, p. 1.
- C. The maximum allowable emission rates are set in the MAERT attached to the permit. GC 8, p. 1; 30 TEX. ADMIN. CODE § 116.115(b)(2)(F).
- D. The MAERT permits the following emissions:
 - 1. For the OP2 cooling tower, EPN# 48E11, not more than 10.92 lbs/hr and 47.83 tpy of VOCs.

B. Investigations

1. January 2002

12.4 On January 29 - 30, 2002, the TCEQ conducted a New Source Review Level 3 of the Channelview Facility to determine whether Equistar operated its cooling towers within the permitted limits. The investigator reviewed Equistar's records of tests of the cooling tower effluent waters. The TCEQ investigator identified conditions he believed constituted violations of the applicable laws and regulations:

- A. From July 29 to December 31, 2000, the OP 1 cooling tower emitted more than 50 tons of VOCs, in excess of the annual emission limit of 33.4 tons.⁷ Equistar exceeded its annual permit limit on or before October 30, 2000, and therefore all VOC emissions for the remaining 62 days in 2000 were unauthorized emissions.

⁷For both the OP1 and OP2 cooling towers, the emission estimates reflect no VOC emissions from January 1 to July 28, because the data was not available. On information and belief, there were emissions from the cooling towers during this period, which would increase the amount of excess emissions and the days of violation.

In addition, the cooling tower emissions are based on Equistar's effluent sample tests regularly taken from each cooling tower. The TCEQ investigator then determined emissions by applying the VOC concentration to cooling water throughput of 60% of capacity, the rate at the time of the investigation. On information and belief, the 60% throughput is historically low and understates the true excess emissions.

- B. From July 29 to October 30, 2000 (the date that Equistar exceeded its annual VOC emission limit) Equistar exceeded its hourly permit limit at the OP 1 cooling tower on at least 63 days.
- C. During 2001, Equistar exceeded its annual VOC emission limit from the OP 1 cooling tower by emitting over 48 tons of VOCs. Equistar reached its annual limit on or about October 28, 2001, and therefore all emissions for the remaining 64 days in calendar year 2001 were unauthorized.
- D. From January 1 to October 28, 2001 (the date that Equistar exceeded its annual VOC emission limit) Equistar exceeded its hourly permit limit at the OP 1 cooling tower on at least 126 days.
- E. From January 1 to January 29, 2002, Equistar exceeded its hourly permit limit at the OP 1 cooling tower on at least fourteen days.
- F. From July 29 to December 31, 2000, the OP 2 cooling tower emitted more than 200 tons of VOCs, in excess of the annual emission limit of 47.83 tons. Equistar exceeded its annual permit limit on or before August 9, 2000, and therefore all VOC emissions for the remaining 144 days in 2000 were unauthorized emissions.

- G. From July 29 to August 9, 2000 (the date that Equistar exceeded its annual VOC emission limit) Equistar exceeded its hourly permit limit at the OP 2 cooling tower on at least fourteen days.
- H. During 2001, Equistar exceeded its annual VOC emission limit from the OP 2 cooling tower by emitting over 360 tons of VOCs. Equistar reached its annual limit on or about February 10, 2001, and therefore all emissions for the remaining 324 days in calendar year 2001 were unauthorized.
- I. From January 1 to February 10, 2001 (the date that Equistar exceeded its annual VOC emission limit) Equistar exceeded its hourly permit limit at the OP 2 cooling tower on at least 40 days.
- J. From January 1 to January 29, 2002, Equistar exceeded its hourly permit limit at the OP 2 cooling tower on at least 27 days.

C. Excess Emission Events

12.5 On July 14, 2004, Equistar reported that exchanger E-36232 leaked to a pressure relief valve that vented to the atmosphere, referred to as Emission Event 42768. This emission point is not authorized under Permit 1768. The emission event continued for 3,057 hours, to November 19, 2004.

12.6 On July 14, 2004 through July 20, 2004, Equistar routed liquids to Tank 3912, EPN# 39E12 in Permit 1768, referred to as Emission Event 43168. The system was not equipped to remove excess vapors from the liquids, resulting in the following excess emissions:

A. Tank 3912 emitted 1,100 pounds of benzene in the 200 hour period, exceeding the limit of 1.31 lbs/hr.

B. Tank 3912 emitted 2,000 pounds of VOCs in the 200 hour period, exceeding the limit of 2.62 lbs/hr.

12.7 For 170.75 hours starting on April 21, 2004 and ending on April 28, 2004, Equistar reported the release of over 170 pounds of various VOCs from the condensate pot to Reboiler E-36118B. This is not an authorized emission point.

12.8 For 3.5 hours on July 14 - 15, 2004, Equistar reported the release of 3,900 pounds of CO from the OP1 flare, EPN# 38E01. This is in excess of the hourly emission rate of 805 lbs/hr.

12.9 For 3.5 hours on July 14 - 15, 2004, Equistar reported the release of 540 pounds of NO_x from the OP1 flare, EPN# 38E01. This is in excess of the hourly emission rate of 111.5 lbs/hr.

XIII.
Channelview Violations

A. Excess Emissions from the Cooling Towers

13.1 Equistar violated Section 382.085 of the TCAA; Permit 1768 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the annual or hourly VOC emission rate for the OP 1 tower on at least 329 days from July 29, 2000 to January 29, 2002. On information and belief, this problem existed prior to July 29, 2000 and may have continued past January 29, 2002. Each time the OP 1 tower exceeded an emission rate is a separate violation subject to a civil penalty between \$50 and \$25,000.

13.2 Equistar violated Section 382.085 of the TCAA; Permit 2933 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding the annual or hourly VOC emission rate for the OP 2 tower on at least 549 days from July 29, 2000 to January 29, 2002. On information and belief, this problem existed prior to July 29, 2000 and may have continued past January 29, 2002. Each time the OP 2 tower exceeded an emission rate is a separate violation subject to a civil penalty between \$50 and \$25,000.

B. Excess Emission Events

13.3 Equistar violated Section 382.085 of the TCAA; Permit 1768 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by emitting VOCs from heat exchanger E-36232 to the atmosphere for 3,057 hours over 128 days. Heat exchanger E-36232 is not an authorized emission point. Each day of emissions from this heat exchanger is a violation subject to a civil penalty between \$50 and \$25,000.

13.4 Equistar violated Section 382.085 of the TCAA; Permit 1768, GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by emitting VOCs and benzene from Tank TK-3912 in excess of the hourly emission limits for approximately 200 hours over nine days. Equistar committed two violations per day for nine days, for a total of eighteen days of violation. Each day of violation is subject to a civil penalty between \$50 and \$25,000.

13.5 Equistar violated Section 382.085 of the TCAA; Permit 1768 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by emitting VOCs from the condensate point for reboiler E-36118B, an unauthorized emission point, for 170.75 hours from April 21, 2004, to April 28, 2004. Each of the eight days on which the condensate point emitted VOCs is a separate violation subject to a civil penalty between \$50 and \$25,000.

13.6 Equistar violated Section 382.085 of the TCAA; Permit 1768 GC 8, MAERT; and 30 TEX. ADMIN. CODE §116.115(b)(2)(F) by exceeding hourly CO and NO_x emission rates for the OP1 flare, EPN# 38E01, on July 14, 2004. Equistar exceeded two emission limits, each of which is a separate violation subject to a civil penalty between \$50 and \$25,000.

XIV. Chocolate Bayou Background

14.1 Equistar owns and operates a chemical facility 12 miles south of Alvin, Texas, on FM 2917 (“Chocolate Bayou”).

A. Permits

1. Permit No. 19480

14.2 On January 23, 2001, the TCEQ issued revised Permit No. 19480 (“Permit 19480”) according to the New Source Review provisions of the TCAA. Permit 19480 applies to Equistar Chocolate Bayou and contains the following GCs and SCs:

A. Accessible valves shall be monitored by leak checking for fugitive emissions at least quarterly with an approved gas analyzer. SC 4F, p.

2.

- B. All pump and compressor seals shall be monitored with an approved gas analyzer at least quarterly. SC 4G, p. 2.
- C. The Facility is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 60, subparts A [40 C.F.R. §§ 60.1 - .19]; Kb [40 C.F.R. §§ 60.110b - .117b]; VV [40 C.F.R. §§ 60.480 - .489]; & NNN, [40 C.F.R. §§ 60.660 - .668]. SC 2, p. 1.
- D. The Facility is required to comply with all of the applicable EPA regulations found in 40 C.F.R. part 63, subparts A [40 C.F.R. §§ 63.1 - .12]; F [40 C.F.R. §§ 63.100 - .107]; G [40 C.F.R. §§ 63.110 - .153]; & H [40 C.F.R. §§ 63.160 - .183]. SC 3, p. 1.
- E. Each open-ended valve or line is required to be equipped with a cap, blind flange, plug, or second valve. SC 4E, p. 2.
- F. Emission rates must not exceed the MAERT attached to the permit. GC 8, p. 1; SC 1, p. 1; 30 TEX. ADMIN. CODE § 116.115(b)(2)(F).
- G. The MAERT permits the following emissions:
1. For the hydrocarbons flare, EPN# 318Z3, NO_x limits of 2.2 lbs/hr and 4.0 tpy.
 2. For the hydrocarbons flare, EPN# 318Z3, CO limits of 16.1 lbs/hr and 26.0 tpy.

3. For storage tank 320T247-2, EPN# 320T247-2, a VOC limit of 0.47 lbs/hr.⁸
4. For storage tank 320T285, EPN# 320T285, a VOC limit of 0.47 lbs/hr.

2. Federal Operating Permit No. O-02260

14.3 On June 17, 2003, the TCEQ issued Federal Operating Permit No. O-02260 (“Permit O-02260”), under the provisions of the TCAA implementing the federal operating permits program. Permit O-02260 applies to the aromatics/isoprene units in the Equistar Chocolate Bayou Facility and contains the following STCs, ARs, and NSRAR:

- A. Permit holders must comply with the ARs. STC 1(A), (C), p. 1.
- B. Permit holders must comply with the NSRAR and appropriate permits by rule. STC 20, p. 14.
- C. The NSRAR set forth applicable NSR permits, including Permit 19480. Permit O-02260, p. 124.

⁸For both tanks 320T247-2 and 320T285, Defendants’ reports to the State claimed emission limits of 0.75 lbs/hr. for VOC.

B. Investigations

1. December 2004 through May 2005

14.4 From December 20, 2004, through May 5, 2005, the TCEQ conducted a Comprehensive Compliance Office Permit Compliance Certification Investigation of the Equistar Chocolate Bayou Facility. The investigation was primarily a review of Equistar's records. The TCEQ investigator identified conditions she believed constituted violations of the applicable laws and regulations:

- A. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar reported that 59 valves had not been monitored until after March 31, 2004.
- B. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar reported that 2 pumps had not been monitored until after March 31, 2004.
- C. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar reported that 46 open-ended lines were identified without plugs or caps as follows:
 - 1. September 26, 2003: eight-open-ended lines.
 - 2. October 20, 2003: ten open-ended lines.
 - 3. January 27, 2004: five open-ended lines.

4. February 2, 2004: three open-ended lines.
 5. February 3, 2004: six open-ended lines.
 6. February 6, 2004: ten open-ended lines.
 7. February 23, 2004: one open-ended line.
 8. February 26, 2004: three open-ended lines.
- D. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar reported that it failed to timely make the first attempt at repair on three pumps, two sensory leaks, and two connectors.
- E. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar reported that it failed to complete repairs on one leaking pump within fifteen days.
- F. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar admits that in permit representations to the TCEQ to maintain 97% control efficiency for connectors, it was required to conduct quarterly monitoring. For the second quarter of 2003 and the first quarter of 2004, Equistar failed to monitor 105 connectors (each period), for a total of 210 missed monitoring events.
- G. Equistar was required to report all deviations occurring between June 17, 2003 and December 17, 2003 in its January deviation report.

However, Equistar did not report the following violations until its July 17, 2004 report:

1. Excessive NO_x emissions from Flare EPN# 318Z3 during weekly routing of waste gas to the flare on June 25, 2003; July 28, 2003; October 8, 2003; October 15, 2003; and December 1, 2003.⁹
2. The failure to commence repairs within five days and complete repairs within fifteen days on leaking pump 320P232-1.

H. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar admits that it exceeded its hourly permit limit for NO_x emissions from Flare EPN# 318Z3 during weekly routing of waste gas to the flare on April 27, 2004; April 30, 2004; May 28, 2004; May 30, 2004; and June 11, 2004.¹⁰

I. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar admits that it exceeded its hourly limit for CO emissions from

⁹In its deviation report, Equistar did not report the quantity of NO_x emissions nor the duration. The State presumes the exceedence lasted less than one hour.

¹⁰In its deviation report, Equistar did not report the quantity of NO_x emissions nor the duration. The State presumes the exceedence lasted less than one hour.

Flare EPN# 318Z3 during weekly routing of waste gas to the flare on April 27, 2004 and April 30, 2004.¹¹

- J. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar admits that it exceeded its annual limit for both NO_x and CO from flare EPN# 318Z3.¹²
- K. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar admits that it exceed its hourly limit for VOCs from storage tank 320T247-2 on December 8, 2003, for a total of 10 hours. During the event, Equistar emitted 50.6 pounds of VOCs, a rate of over 5.0 lbs/hr.
- L. In its deviation report for the period June 17, 2003 to June 17, 2004, Equistar admits that it exceed its hourly limit for VOCs from storage tank 320T285 for 75 hours from June 26, 2003 to June 29, 2003. During the event, Equistar emitted 104.6 pounds of VOCs, a rate of 1.4 lbs/hr.

¹¹In its deviation report, Equistar did not report the quantity of CO emissions nor the duration. The State presumes the exceedence lasted less than one hour.

¹²In its deviation report, Equistar did not report the quantity of either NO_x or CO emissions.

XV.
Equistar Chocolate Bayou Violations

A. Failure to Monitor Accessible Valves

15.1 Equistar violated Section 382.085 of the TCAA; Permit 19480 SC 4F; Permit O-02260 STC 1, 20; 30 TEX. ADMIN. CODE §§ 101.20, 113.130, 116.115(c), 122.143(4); and 40 C.F.R. § 63.168 by failing to monitor 59 valves on a quarterly basis during at least the last two calendar quarters of 2003 and the first quarter of 2004, for a total of at least 177 missed monitoring events. On information and belief, this problem existed prior to June 17, 2003, and Equistar missed additional monitoring events. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

15.2 Equistar violated Section 382.085 of the TCAA; Permit 19480 SC 4F; Permit O-02260, STC 1, 20; and 30 TEX. ADMIN. CODE §§ 115.354(2), 116.115(c), 122.143(4) by failing to monitor 59 valves on a quarterly basis during at least the last two calendar quarters of 2003 and the first quarter of 2004, for a total of at least 177 missed monitoring events. On information and belief, this problem existed prior to June 17, 2003, and Equistar missed additional monitoring events. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

B. Failure to Monitor Pumps

15.3 Equistar violated Section 382.085 of the TCAA; Permit 19480 SC 4G; Permit O-02260 STC 1, 20; 30 TEX. ADMIN. CODE §§ 101.20, 113.130, 116.115(c), 122.143(4); and 40 C.F.R. § 63.163 by failing to monitor two pumps on a quarterly, or more frequent, basis during at least the last two calendar quarters of 2003 and the first quarter of 2004, for a total of at least six missed monitoring events. On information and belief, this problem existed prior to June 17, 2003, and Equistar missed additional monitoring events. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

15.4 Equistar violated Section 382.085 of the TCAA; Permit 19480, SC 4G; Permit O-02260, STC 1, 20; and 30 TEX. ADMIN. CODE §§ 115.354, 116.115(c), 122.143(c) by failing to monitor two pumps on a quarterly basis during at least the last two calendar quarters of 2003 and the first quarter of 2004, for a total of at least six missed monitoring events. On information and belief, this problem existed prior to June 17, 2003, and Equistar missed additional monitoring events. Each missed monitoring event is a violation subject to a civil penalty between \$50 and \$25,000.

C. Failure to Plug or Cap Open-Ended Lines

15.5 Equistar violated Section 382.085 of the TCAA; Permit 19480, SC 4E; Permit O-02260 STC 1, 20; 30 TEX. ADMIN. CODE §§ 101.20, 113.130, 116.115(c),

122.143(4); and 40 C.F.R. § 63.167 by failing to plug or cap 46 open-ended lines. On information and belief, this problem existed prior to dates on which Equistar discovered and remedied the violation as more particularly described in ¶ 14.4.C, *infra*. Each day on which an open-ended line is unplugged or uncapped is a violation, each of which is subject to a civil penalty between \$50 and \$25,000.

15.6 Equistar violated Section 382.085 of the TCAA; Permit 19480, SC 4E; Permit O-02260, STC 1, 20; and 30 TEX. ADMIN. CODE §§ 115.352(4), 116.115(c), 122.143(4) by failing to plug or cap 46 open-ended lines. On information and belief, this problem existed prior to dates on which Equistar discovered and remedied the violation as more particularly described in ¶ 14.4.C, *infra*. Each day on which an open-ended line is unplugged or uncapped is a violation, each of which is subject to a civil penalty between \$50 and \$25,000.

D. Failure to Timely Repair Leaking Components

15.7 Equistar violated Section 382.085 of the TCAA; Permit 19480 SC 4H; Permit O-02260 STC 1, 20; 30 TEX. ADMIN. CODE §§ 101.20, 113.130, 116.115(c), 122.143(4); and 40 C.F.R. §§ 60.482-8, 63.163, 63.168 by failing to timely repair three leaking pumps, two sensory leaks, and two connectors, and failing to timely complete repairs on one pump. On information and belief, these problems existed prior to dates on which Equistar discovered and remedied the violation as more

particularly described in ¶ 14.4.D, *infra*. Each day on which a leaking pump, sensory leak, or connector is not timely repaired is a violation, each of which is subject to a civil penalty between \$50 and \$25,000.

15.8 Equistar violated Section 382.085 of the TCAA; Permit O-02260, STC 1, 20; and 30 TEX. ADMIN. CODE §§ 115.352, 116.115(c), 122.143(4) by failing to timely repair three leaking pumps, two sensory leaks, and two connectors, and failing to timely complete repairs on one pump. On information and belief, these problems existed prior to dates on which Equistar discovered and remedied the violation as more particularly described in ¶ 14.4.D-E, *infra*. Each day on which a leaking pump, sensory leak, or connector is not timely repaired is a violation, each of which is subject to a civil penalty between \$50 and \$25,000.

E. Failure to Monitor Connectors

15.9 Equistar violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 116.116 by failing to conduct quarterly monitoring on 105 connectors for two quarters. Equistar's failure contravenes representations made by it in connection with Permit 19480. Equistar failed to conduct a total of 210 monitoring events each of which is subject to a civil penalty between \$50 and \$25,000.

F. Failure to Report Deviations from Permit O-02260

15.10 Equistar violated Section 382.085 of the TCAA and 30 TEX. ADMIN. CODE § 122.145(2) by failing to timely report at least six instances of deviations from Permit O-02260 that occurred from June 17, 2003 through December 17, 2003. These deviations were eventually reported on July 17, 2004. Each day that Equistar failed to submit a complete and accurate list of deviations is a separate violation. Equistar has committed at least 182 violations, each of which is subject to a civil penalty between \$50 and \$25,000.

G. Excess Emissions From the Hydrocarbon Flare

15.11 Equistar violated Section 382.085 of the TCAA; Permit 19480, GC 8, MAERT; Permit O-02260 SC 20, NSRAR; and 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 122.143(4) by emitting NO_x from the hydrocarbon flare, EPN# 318Z3, in excess of the hourly emission limits for at least one hour on ten separate days. Equistar committed a total of at least ten days of violation. Each day of violation is subject to a civil penalty between \$50 and \$25,000.

15.12 Equistar violated Section 382.085 of the TCAA; Permit 19480, GC 8, MAERT; Permit O-02260 SC 20, NSRAR; and 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 122.143(4) by emitting CO from the hydrocarbon flare, EPN# 318Z3, in excess of the hourly emission limits for at least one hour on two separate

days. Equistar committed a total of at least two days of violation. Each day of violation is subject to a civil penalty between \$50 and \$25,000.

15.13 Equistar violated Section 382.085 of the TCAA; Permit 19480, GC 8, MAERT; Permit O-02260 SC 20, NSRAR; and 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 122.143(4) by emitting NO_x and CO from the hydrocarbon flare, EPN# 318Z3, in excess of the annual emission limits. Each pollutant is a separate violation and each day on which pollutants were emitted in excess of the annual limit constitute separate violations. Equistar committed a total of at least two days of violation. Each day of violation is subject to a civil penalty between \$50 and \$25,000.

H. Excess Emissions From Storage Tanks

15.14 Equistar violated Section 382.085 of the TCAA; Permit 19480, GC 8, MAERT; Permit O-02260 SC 20, NSRAR; and 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F), 122.143(4) by emitting VOCs from storage tank 320T247-2 in excess of the hourly emission limit for at least ten hours on one day. Equistar committed a total of at least one day of violation. Each day of violation is subject to a civil penalty between \$50 and \$25,000.

15.15 Equistar violated Section 382.085 of the TCAA; Permit 19480, GC 8, MAERT; Permit O-02260 SC 20, NSRAR; and 30 TEX. ADMIN. CODE

§§ 116.115(b)(2)(F), 122.143(4) by emitting VOCs from storage tank 320T285 in excess of the hourly emission limits for at least 75 hours on four separate days. Equistar committed a total of at least four days of violation. Each day of violation is subject to a civil penalty between \$50 and \$25,000.

XVI. Civil Penalties

16.1 Defendants may each be assessed a civil penalty between \$50 and \$25,000 for each day of each violation. TEX. WATER CODE § 7.102.

16.2 Each day of a continuing violation is a separate violation. *Id.*

16.3 The State seeks civil penalties within the statutory range for each day and each act of violation.

XVII. Attorney's Fees

17.1 The State requests attorney's fees, investigative costs, and court costs incurred in this cause. TEX. WATER CODE § 7.108 and TEX. GOV'T CODE § 402.006(c).

XVIII.
Rule 194 Request for Disclosure

18.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, the State requests Defendants to disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, Plaintiff, the State of Texas, requests:

1. Defendants be cited to appear and answer herein;
2. The Court grant judgment for appropriate civil penalties against Defendants for violations alleged herein, including post-judgment interest;
3. The Court award the State its reasonable attorney's fees, court costs, and investigative costs; and,
4. For such other and further relief, at law and in equity, to which Plaintiff may show itself justly entitled.

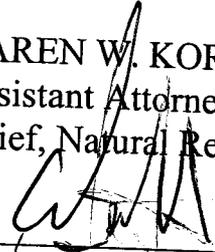
Respectfully submitted,

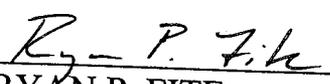
GREG ABBOTT
Attorney General of Texas

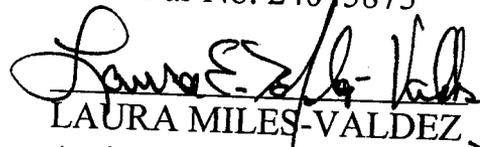
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