

1 CLIFTON J. MCFARLAND (Bar No. 136940)
2 LAURIE W. HODGES (Bar No. 238872)
3 DOWNEY BRAND LLP
4 555 Capitol Mall, Tenth Floor
5 Sacramento, CA 95814-4686
6 Telephone: (916) 444-1000
7 Facsimile: (916) 444-2100
8 Electronic Mail: cmcfarland@downeybrand.com
9 lhodges@downeybrand.com

10 Attorneys for Respondent, VALIMET, Inc.

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

11 UNITED STATES
12 ENVIRONMENTAL PROTECTION AGENCY
13 REGION IX
14 75 HAWTHORNE STREET
15 SAN FRANCISCO, CA 94105

16 IN THE MATTER OF

17 Valimet, Inc.,

18 Respondent

Docket No. EPCRA-09-2007-0021.

**VALIMET'S ANSWER AND REQUEST
FOR HEARING IN RESPONSE TO EPA'S
CIVIL COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING UNDER
SECTION 325(C) OF THE EMERGENCY
PLANNING AND COMMUNITY RIGHT
TO KNOW ACT**

19 Respondent Valimet, Inc. ("Valimet"), by and through its attorneys Downey Brand LLP,
20 hereby answers Complainant United States Environmental Protection Agency's ("EPA") Civil
21 Complaint and Notice of Opportunity for Hearing Under Section 325(c) of the Emergency
22 Planning and Community Right to Know Act ("Complaint"), served on or about September 24,
23 2007, as follows:

GENERAL DENIAL

24 Except as expressly admitted herein, Valimet denies each and every allegation in EPA's
25 Complaint.

SPECIFIC RESPONSES

PRELIMINARY STATEMENT

APPLICABLE STATUTORY AND REGULATORY SECTIONS

1 1. Paragraph 1 states legal conclusions as to which no response is required. To the
2 extent that any allegations in Paragraph 1 require a response, Valimet lacks sufficient knowledge
3 or information to form a belief as to the truth of those allegations, and on that basis denies those
4 allegations.

5 2. Valimet admits that Respondent is Valimet, Inc. The remainder of Paragraph 2
6 states legal conclusions as to which no response is required. To the extent that any allegations in
7 Paragraph 2 require a response, Valimet lacks sufficient knowledge or information to form a
8 belief as to the truth of those allegations, and on that basis denies those allegations.

9 3. Valimet admits that is a Delaware registered corporation.

10 4. Valimet admits that it owns and operates a place of business with an address at 431
11 Sperry Road, Stockton, California. Valimet lacks sufficient knowledge or information to form a
12 belief as to the truth of the remaining allegations of Paragraph 4, and on that basis denies those
13 allegations.

14 5. Paragraph 5 states legal conclusions as to which no response is required. To the
15 extent that any allegations in Paragraph 5 require a response, Valimet lacks sufficient knowledge
16 or information to form a belief as to the truth of those allegations, and on that basis denies those
17 allegations.

18 6. Paragraph 6 states legal conclusions as to which no response is required.
19 Paragraph 6 also purports to characterize "Sections 313(a) and (b) of EPCRA, as implemented by
20 40 C.F.R. §§ 372.22 and 372.30," as to which no response is required. The referenced statute and
21 regulations speak for themselves. Valimet denies any allegations in Paragraph 6 that are
22 inconsistent with the referenced statute and regulations. Valimet lacks sufficient knowledge or
23 information to form a belief as to the truth of the remaining allegations of Paragraph 6, and on
24 that basis denies those allegations.

25 7. Paragraph 7 states legal conclusions as to which no response is required.
26 Paragraph 7 also purports to characterize "Section 313(b) of EPCRA and 40 C.F.R. § 372.22," as
27 to which no response is required. The referenced statute and regulation speak for themselves.
28 Valimet denies any allegations in Paragraph 7 that are inconsistent with the referenced statute and
regulation. Valimet lacks sufficient knowledge or information to form a belief as to the truth of

1 the remaining allegations of Paragraph 7, and on that basis denies those allegations.

2 8. Paragraph 8 states legal conclusions as to which no response is required.
3 Paragraph 8 also purports to characterize the "applicable thresholds for reporting established
4 under EPCRA Section 313(f) and 40 C.F.R. § 372.25," as to which no response is required. The
5 referenced statute and regulation speak for themselves. Valimet denies any allegations in
6 Paragraph 8 that are inconsistent with the referenced statute and regulation. Valimet lacks
7 sufficient knowledge or information to form a belief as to the truth of the remaining allegations of
8 Paragraph 8, and on that basis denies those allegations.

9 9. Paragraph 9 states legal conclusions as to which no response is required.
10 Paragraph 9 also purports to characterize the "term 'process'" under "40 C.F.R. § 372.3," as to
11 which no response is required. The referenced regulation speaks for itself. Valimet denies any
12 allegations in Paragraph 9 that are inconsistent with the referenced regulation. Valimet lacks
13 sufficient knowledge or information to form a belief as to the truth of the remaining allegations of
14 Paragraph 9, and on that basis denies those allegations.

15 10. Paragraph 10 states legal conclusions as to which no response is required.
16 Paragraph 10 also purports to characterize the "term 'manufacture'" under "40 C.F.R. § 372.3,"
17 as to which no response is required. The referenced regulation speaks for itself. Valimet denies
18 any allegations in Paragraph 10 that are inconsistent with the referenced regulation. Valimet
19 lacks sufficient knowledge or information to form a belief as to the truth of the remaining
20 allegations of Paragraph 10, and on that basis denies those allegations.

21 ALLEGATIONS

22 11. Paragraph 11 states legal conclusions as to which no response is required.

23 12. Paragraph 12 states legal conclusions as to which no response is required.

24 13. Paragraph 13 states legal conclusions as to which no response is required.

25 14. Paragraph 14 states legal conclusions as to which no response is required.

26 15. Valimet admits that it produces high quality spherical metal powders, including
27 aluminum, aluminum silicon, aluminum bronze, copper compounds, and other alloys at its facility
28 located at 431 Sperry Road, Stockton, California.

16. Paragraph 16 states legal conclusions as to which no response is required.

COUNTS 1-5

17. Valimet hereby incorporates by reference, as though fully stated herein, its responses to Paragraphs 1 through 16.

18. Valimet admits that during calendar year 2001, Valimet processed around 4,316,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

19. Valimet admits that during calendar year 2002, Valimet processed around 4,125,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

20. Valimet admits that during calendar year 2003, Valimet processed around 3,910,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

21. Valimet admits that during calendar year 2004, Valimet processed around 4,884,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

22. Valimet admits that during calendar year 2005, Valimet processed around 2,985,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

23. Paragraph 23 states legal conclusions as to which no response is required.

24. Paragraph 24 states legal conclusions as to which no response is required..

25. Paragraph 25 states legal conclusions as to which no response is required.

26. Valimet denies the allegations in paragraph 26.

COUNTS 6-10

27. Valimet hereby incorporates by reference, as though fully stated herein, its responses to Paragraphs 1 through 26.

28. Valimet denies the allegations in paragraph 28. Valimet admits that during calendar year 2001, Valimet processed around 52,583 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

29. Valimet admits that during calendar year 2002, Valimet processed around 60,000 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

30. Valimet admits that during calendar year 2003, Valimet processed around 60,000 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

31. Valimet admits that during calendar year 2004, Valimet processed around 52,700 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

1 32. Valimet admits that during calendar year 2005, Valimet processed around 62,400
2 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

3 33. Paragraph 33 states legal conclusions as to which no response is required.

4 34. Paragraph 34 states legal conclusions as to which no response is required

5 35. Paragraph 35 states legal conclusions as to which no response is required.

6 36. Valimet denies the allegations in paragraph 36.

7
8 **REMAINING PARAGRAPHS**

9 The remaining paragraphs of EPA's Complaint consist of narrative regarding EPA's
10 Proposed Civil Penalty, as to which no response is required. Insofar as a response is required,
11 Valimet admits that EPA is seeking a civil administrative penalty, but denies that EPA is entitled
12 to any penalty from or relating to Valimet.

13 **AFFIRMATIVE DEFENSES**

14 Valimet sets forth below its affirmative defenses. Unless otherwise stated, each
15 affirmative defense is asserted as to all Counts against Valimet. By setting forth these affirmative
16 defenses, Valimet does not assume the burden of proving any fact, issue, or element of a claim for
17 relief where such burden properly belongs to EPA. Nor shall anything stated or unstated
18 constitute an admission of any kind.

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Lack of Intent)**

21 1. The Complaint and each count therein is void because Valimet lacked intent to
22 violate the referenced statutes and regulations.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Unlawful Listing)**

25 2. Listings of aluminum as toxic in 40 C.F.R. § 372.65 are arbitrary and capricious or
26 otherwise not in accordance with the law.

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COUNTS 1-5

17. Valimet hereby incorporates by reference, as though fully stated herein, its responses to Paragraphs 1 through 16.

18. Valimet admits that during calendar year 2001, Valimet processed around 4,316,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

19. Valimet admits that during calendar year 2002, Valimet processed around 4,125,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

20. Valimet admits that during calendar year 2003, Valimet processed around 3,910,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

21. Valimet admits that during calendar year 2004, Valimet processed around 4,884,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

22. Valimet admits that during calendar year 2005, Valimet processed around 2,985,000 pounds of aluminum at its facility, located at 431 Sperry Road, Stockton, California.

23. Paragraph 23 states legal conclusions as to which no response is required.

24. Paragraph 24 states legal conclusions as to which no response is required.

25. Paragraph 25 states legal conclusions as to which no response is required.

26. Valimet denies the allegations in paragraph 26.

COUNTS 6-10

27. Valimet hereby incorporates by reference, as though fully stated herein, its responses to Paragraphs 1 through 26.

28. Valimet denies the allegations in paragraph 28. Valimet admits that during calendar year 2001, Valimet processed around 52,583 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

29. Valimet admits that during calendar year 2002, Valimet processed around 60,000 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

30. Valimet admits that during calendar year 2003, Valimet processed around 60,000 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

31. Valimet admits that during calendar year 2004, Valimet processed around 52,700 pounds of copper compounds at its facility, located at 431 Sperry Road, Stockton, California.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Laches)**

3 3. The Complaint, and each count therein, is barred by the equitable doctrine of
4 laches because of the unreasonable and prejudicial delay by EPA in filing this action.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Statute of Limitations)**

7 4. EPA's claims are barred, in whole or in part, by the applicable statutes of
8 limitations.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Causation)**

11 5. No act or omission of Valimet or by any person or entity for which Valimet may
12 be responsible was the legal cause of any non-submission of any Form R.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Independent, Intervening and/or Superseding Cause)**

15 6. Any act or omission of Valimet was not a substantial factor in bringing about
16 alleged violations of EPCRA Section 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372 and was
17 not a contributing cause thereof. If there were violations of EPCRA Section 313, 42 U.S.C. §
18 11023, and 40 C.F.R. Part 372, such violations were the result of independent, intervening, or
19 superseding forces and/or actions or omissions of second and/or third parties over which Valimet
20 had no control and did not in any way participate in and for which Valimet is not liable.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Failure to State a Claim)**

23 7. The Complaint fails to allege sufficient facts to state a claim upon which relief can
24 be granted against Valimet.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 **(Failure to Follow Own Policies)**

27 8. EPA has failed to follow its own policies and has taken actions inconsistent with
28 its policy statements and mission in connection with the subject matter of this Complaint.

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Void for Vagueness as Applied)**

3 9. The underlying statutes and regulations that Valimet is alleged to have violated are
4 void for vagueness as applied to Valimet.

5 **TENTH AFFIRMATIVE DEFENSE**

6 **(Equal Protection)**

7 10. EPA's claims are barred because they violate the Equal Protection to which
8 Valimet is entitled under the United States and California Constitutions.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(De Minimis Harm)**

11 11. If any hazardous substances from Valimet were released as a result of the
12 allegations alleged in the Complaint, which Valimet denies, then the amount of, and/or the harm
13 or relief attributable to, such hazardous substances is de minimis.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(Offset)**

16 12. If the EPA is held entitled to recover civil penalties against Valimet, which
17 entitlement Valimet denies, such recovery must be reduced and offset according to the EPA's
18 own penalty policies in assessing such penalties.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 **(Due Process)**

21 13. EPA's claims are barred because they violate the due process protections of the
22 United States Constitution.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 **(Mistake)**

25 14. EPA's claims are barred by its mistake of fact and/or by third party's mistake of
26 fact.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(Reservation of Rights)**

3 15. The Complaint does not describe its claims or events with sufficient particularity
4 to allow Valimet to ascertain what other affirmative defenses may exist, and Valimet therefore
5 reserves the right to assert all affirmative defenses which may pertain to the Complaint once the
6 precise nature of the claims are ascertained. Valimet also reserves the right to assert all other
7 defenses that arise in discovery, at trial, or otherwise.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Valimet prays as follows:

- 10 1. That the Administrator dismiss EPA's Complaint with prejudice;
- 11 2. That EPA take nothing by reason of its Complaint and that judgment be rendered
12 in favor of Valimet;
- 13 3. That Valimet be awarded its costs, attorneys' fees, and expenses incurred in
14 connection with this action; and
- 15 4. For such other relief as the Administrator deems just and proper.

16 **REQUEST FOR ADMINISTRATIVE HEARING**

17 Respondent Valimet hereby requests an administrative hearing on all matters set forth in
18 this Complaint and to contest the appropriateness of the proposed penalty in accordance with the
19 Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of Practice
20 Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or
21 Suspension of Permits, 40 C.F.R. Part 22.

22 DATED: December 13 2007

DOWNEY BRAND LLP

23 By: 

24 CLIFTON J. MCFARLAND
25 Attorneys for Respondent
26 VALIMET, INC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 555 Capitol Mall, Tenth Floor, Sacramento, California, 95814-4686. On December 13, 2007, I served the within document(s):

VALIMET'S ANSWER AND REQUEST FOR HEARING IN RESPONSE TO EPA'S CIVIL COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING UNDER SECTION 325(C) OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT

- BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

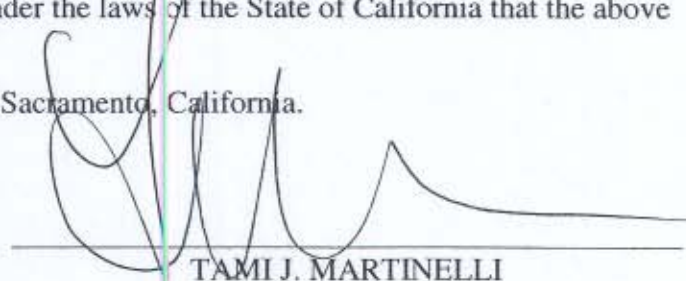
DOWNEY BRAND LLP

William Nastri, Esq. Presiding Officer U.S. Environmental Protection Agency 75 Hawthorne Street San Francisco, CA 94105	Ivan Lieben Assistant Regional Counsel Office of Regional Counsel (ORC-2) USEPA, Region IX 75 Hawthorne Street San Francisco, CA 94105
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 13, 2007, at Sacramento, California.



TAMI J. MARTINELLI