

United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2019

June 22, 2015

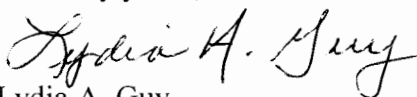
Honorable Susan L. Biro  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Subject: Eagle Brass Company.  
Docket No. EPCRA-03-2015-0127

Dear Judge Biro:

Pursuant to 40 C.F.R. 22.21(a) of the Consolidated Rules of Practice, I am today transmitting copies of Complaint and Notice of Opportunity for Hearing in the above captioned matter along with Respondent's Answer and Request for Hearing. Please assign an Administrative Law Judge to serve as Presiding Officer.

Sincerely yours,



Lydia A. Guy  
Regional Hearing Clerk

Counsel for Respondent:  
MASANO & BRADLEY  
James E. Gavin, Esq.  
1100 Berkshire Boulevard  
Wyomissing, Pennsylvania 19610  
610.372.7700

Counsel for Complaint:  
Joyce A. Howell (3RC30)  
Senior Assistant Regional Counsel  
US Environmental Protection Agency  
1650 Arch Street  
Philadelphia PA 19103-2029  
215-814-2644

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

IN THE MATTER OF:

:  
: Docket No. EPCRA-III-2015-0127

Eagle Brass Company,

Respondent

Eagle Brass Company  
1243 Old Bernville Road  
Leesport, PA 19533-9115,

Facility

: Answer to Administrative Complaint  
: and Notice of Opportunity for Hearing  
: Under EPCRA §§313 and 325; 42 U.S.C.  
: §§11023 and 11045

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. O.  
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**ANSWER TO COMPLAINT TOGETHER WITH AFFIRMATIVE DEFENSES**

NOW COMES, the Respondent, Eagle Brass Company, by and through counsel, answering the Complaint of the United States Environmental Protection Agency and, in furtherance thereof, states that:

**COUNT I**

1. Denied. The allegations contained in paragraph 1 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required and to the extent that the allegations contained in paragraph 1 refer to statutory and regulatory authority, the same being in writing, they speak for themselves and no further responsive pleading is required.

2. Denied. The allegations contained in paragraph 2 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To

the extent that a response is nevertheless required and to the extent that the allegations contained in paragraph 2 refer to statutory and regulatory authority, the same being in writing, they speak for themselves and no further responsive pleading is required.

3. Denied. The allegations contained in paragraph 3 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required and to the extent that the allegations contained in paragraph 3 refer to statutory and regulatory authority, the same being in writing, they speak for themselves and no further responsive pleading is required.

4. Denied. The allegations contained in paragraph 4 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required and to the extent that the allegations contained in paragraph 4 refer to statutory and regulatory authority, the same being in writing, they speak for themselves and no further responsive pleading is required.

5. Admitted.

6. Admitted.

7. Denied. The allegations contained in paragraph 7 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is admitted that the Respondent operates a manufacturing operation that is located at 1243 Old Bernville Road in Leesport, Pennsylvania.

8. Admitted.

9. Admitted.

10. Admitted.

11. Denied. The allegations contained in paragraph 11 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required and to the extent that the allegations contained in paragraph 11 refer to statutory and regulatory authority, the same being in writing, they speak for themselves and no further responsive pleading is required.

12. Denied. The allegations contained in paragraph 12 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required and to the extent that the allegations contained in paragraph 12 refer to statutory and regulatory authority, the same being in writing, they speak for themselves and no further responsive pleading is required.

13. Denied. After reasonable investigation, the Respondent lacks the knowledge or information sufficient to form a belief as to whether or not the EPA conducted a June 3, 2014 through July 17, 2014 review of Respondent's compliance with the requirements of EPCRA §313 and 40 CFR Part 372. Strict proof, if relevant, is demanded at the time of hearing.

14. Denied. The allegations contained in paragraph 14 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent processed more than 25,000 pounds of copper at its facility in the calendar year of 2010. To the contrary, to the extent that the Respondent processed metal that is the subject of this Complaint, it processed an alloy that contained nickel and copper. By way of further response, the processing of the alloy was properly and timely reported to the EPA. Strict proof to the contrary, if relevant, is demanded at the time of hearing.

15. Denied. The allegations contained in paragraph 15 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent did not submit a completed toxic chemical release form (Form R) for the toxic chemical copper during the calendar year of 2010. To the contrary, the Respondent did not process the toxic chemical copper. To the contrary, it processed an alloy that contained nickel and copper. Furthermore, the Respondent submitted a Form R to the administrator of the EPA and/or the Commonwealth of Pennsylvania by July 1, 2011 that fully and accurately reported the amount of the alloy that had been processed. Strict proof to the contrary, if relevant, is demanded at the time of hearing.

16. Denied. The allegations contained in paragraph 16 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent failed to submit a toxic chemical release form. It is specifically denied that the Respondent is in violation of §313 of the EPCRA, 42 U.S.C. §11023, and 40 C.F.R. §372.30. Strict proof thereof, if relevant, is demanded at the time of hearing.

## COUNT II

17. Denied. The allegations contained in paragraph 17 require no responsive pleading and are, accordingly, denied.

18. Denied. The allegations contained in paragraph 18 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent processed more than 25,000 pounds of copper at its facility in the calendar year of 2011. To the

contrary, to the extent that the Respondent processed metal that is the subject of this Complaint, it processed an alloy that contained nickel and copper. By way of further response, the processing of the alloy was properly and timely reported to the EPA. Strict proof to the contrary, if relevant, is demanded at the time of hearing.

19. Denied. The allegations contained in paragraph 19 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent did not submit a completed toxic chemical release form (Form R) for the toxic chemical copper during the calendar year of 2011. To the contrary, the Respondent did not process the toxic chemical copper. To the contrary, it processed an alloy that contained nickel and copper. Furthermore, the Respondent submitted a Form R to the administrator of the EPA and/or the Commonwealth of Pennsylvania by July 1, 2012 that fully and accurately reported the amount of the alloy that had been processed. Strict proof to the contrary, if relevant, is demanded at the time of hearing.

20. Denied. The allegations contained in paragraph 16 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent failed to submit a toxic chemical release form. It is specifically denied that the Respondent is in violation of §313 of the EPCRA, 42 U.S.C. §11023, and 40 C.F.R. §372.30. Strict proof thereof, if relevant, is demanded at the time of hearing.

### **COUNT III**

21. Denied. The allegations contained in paragraph 21 require no responsive pleading and are, accordingly, denied.

22. Denied. The allegations contained in paragraph 22 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent processed more than 25,000 pounds of copper at its facility in the calendar year of 2012. To the contrary, to the extent that the Respondent processed metal that is the subject of this Complaint, it processed an alloy that contained nickel and copper. By way of further response, the processing of the alloy was properly and timely reported to the EPA. Strict proof to the contrary, if relevant, is demanded at the time of hearing.

23. Denied. The allegations contained in paragraph 23 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent did not submit a completed toxic chemical release form (Form R) for the toxic chemical copper during the calendar year of 2012. To the contrary, the Respondent did not process the toxic chemical copper. To the contrary, it processed an alloy that contained nickel and copper. Furthermore, the Respondent submitted a Form R to the administrator of the EPA and/or the Commonwealth of Pennsylvania by July 1, 2013 that fully and accurately reported the amount of the alloy that had been processed. Strict proof to the contrary, if relevant, is demanded at the time of hearing.

24. Denied. The allegations contained in paragraph 24 are deemed to be averments of law, conclusions of law, or conclusions of fact to which no responsive pleading is required. To the extent that a response is nevertheless required, it is specifically denied that the Respondent failed to submit a toxic chemical release form. It is specifically denied that the Respondent is in

violation of §313 of the EPCRA, 42 U.S.C. §11023, and 40 C.F.R. §372.30. Strict proof thereof, if relevant, is demanded at the time of hearing.

### **RESPONSE TO PROPOSED PENALTY**

The Respondent, Eagle Brass Company, respectfully requests the proposed penalty of the EPA be denied in its entirety.

### **REQUEST FOR A HEARING**

The Respondent, Eagle Brass Company, respectfully requests a hearing on the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **First Defense**

The Complaint herein and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against the Respondent and further fails to state facts sufficient to entitle the Complainant to the relief sought, or to any relief whatsoever from the Respondent.

#### **Second Defense**

The Complainant's claims may be barred, in whole or in part, by the applicable statutes of limitation.

#### **Third Defense**

The Complainant's claims may be barred, in whole or in part, by the doctrine of laches and/or waiver.



#### **Fourth Defense**

The Complainant's claims may be barred, in whole or in part, by the doctrine of estoppel.

#### **Fifth Defense**

The Complainant's claims may be barred, in whole or in part, by its failure to provide timely notice and/or its unreasonable delay in asserting a claim.

#### **Sixth Defense**

The Complainant's claims may be barred, in whole or in part, by the Complainant's failure to properly design a Toxic Chemical Release Form (Form R) that provides the facility with clear notice as to the information to be submitted to the Complainant.

#### **Seventh Defense**

The Complainant's claims may be barred, in whole or in part, by the Complainant's failure to properly give instruction or guidance to facilities on the proper execution and submission requirements of Toxic Chemical Release Forms (Form R).

#### **Eighth Defense**

The Complainant's claims may be barred, in whole or in part, by the doctrine of vested rights due to its prior acceptance of Form R from the Respondent without issuance of a notice of noncompliance.

#### **Ninth Defense**

The facts and circumstances as asserted in the Complaint do not give rise to a basis for a civil penalty.

**Tenth Defense**

At best, the facts and circumstances contained in the Complaint, if true, give rise to a notice of non-compliance.

**Eleventh Defense**

The Complainant has waived any civil administrative penalties by failing to issue a notice of non-compliance.

**Twelfth Defense**

The extent applicable, any civil penalty asserted by the Complainant has been incorrectly calculated.

**Thirteenth Defense**

The civil penalty asserted and alleged in the Complaint is excessive, unconscionable, and inequitable under the facts and circumstances of this case.

**Fourteenth Defense**

The civil penalty asserted and alleged in the complaint is an excessive fine and therefore, violates the Respondent's rights under the 8<sup>th</sup> Amendment of the United States Constitution and under the Pennsylvania Constitution.

**Fifteenth Defense**

The civil penalty asserted and alleged in the Complaint violates the Respondent's constitutional rights under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution and under the Pennsylvania Constitution in that they are penal in nature and are tantamount to the imposition of a criminal fine, and the guidelines, standards and/or instructions ("Guidelines")

for the imposition of the civil penalty are vague, indefinite, and uncertain. Furthermore, these Guidelines do not appraise the Respondent of the conduct that will be subject to criminal penalties, and exposes the Respondent to multiple punishments and fines for the same acts, thereby discriminating against the Respondent on the basis of wealth and that different amounts can be awarded for the same acts against respondents who differ only in material wealth.

**Sixteenth Defense**


The Respondent requires the Complainant to prove its claim for a civil penalty by a minimum standard of clear and convincing evidence, as required by the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution and by the Pennsylvania Constitution. The Respondent further required the Complainant to prove its claim for a civil penalty beyond a reasonable doubt, as required by the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution and by the applicable provisions of the Pennsylvania Constitution.

**Seventeenth Defense**

The Respondent expressly reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by the factual developments in this case.

Respectfully submitted,

MASANO ♦ BRADLEY



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James E. Gavin, Esquire  
Attorneys for Respondent,  
Eagle Brass Company

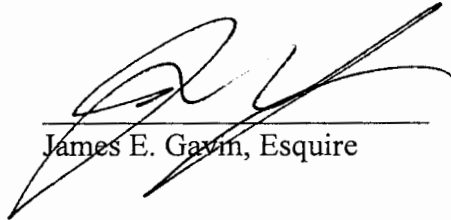
**CERTIFICATE OF SERVICE**

I, James E. Gavin, Esquire, hereby certify that I have this 18<sup>th</sup> day of June 2015, served a true and correct copy of the Plaintiff's Answer to the Defendant's Motion for Sanctions Together with Affirmative Defenses upon the party listed below, via first-class mail, postage prepaid:

*Attorney for Complainant:*

Joyce A. Howell (3RC30)  
Senior Assistant Regional Counsel  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

MASANO ♦ BRADLEY



James E. Gavin, Esquire

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:

:  
: Docket No. EPCRA-III-2015-0127

Eagle Brass Company,

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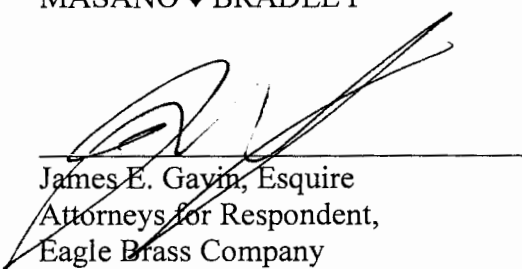
ENTRY OF APPEARANCE

**TO THE CLERK OF COURT:**

Please enter my appearance for Eagle Brass Company, the named Respondent, in the above-captioned case and designate 1100 Berkshire Boulevard, Suite 201, Wyomissing, Pennsylvania 19610 as the place where papers, process and notices may be served.

Respectfully submitted,

MASANO ♦ BRADLEY

  
James E. Gavin, Esquire  
Attorneys for Respondent,  
Eagle Brass Company

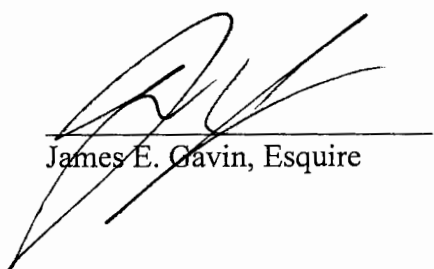
**CERTIFICATE OF SERVICE**

I, James E. Gavin, Esquire, hereby certify that I have this 18<sup>th</sup> day of June 2015, served a true and correct copy of the Entry of Appearance upon the party listed below, via first-class mail, postage prepaid:

*Attorney for Complainant:*

Joyce A. Howell (3RC30)  
Senior Assistant Regional Counsel  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

MASANO ♦ BRADLEY

  
James E. Gavin, Esquire