

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

Eagle Brass Company,

Respondent,

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

Facility.

Docket No. EPCRA-III-2015-0127

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

REGIONAL HEARING CLERK
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COMPLAINT

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Section 325 of the Emergency Planning and Community Right to Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. The Administrator has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 25 – 3 dated May 11, 1994, and this authority was further delegated to the Director of the Land and Chemicals Division, EPA Region III, (Complainant), who issues this Complaint for violations of Section 313 of EPCRA, 42 U.S.C. § 11023 and alleges the following:

COUNT I

1. Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30, requires, in pertinent part, that the owner or operator of a facility that:

- 1) has 10 or more employees;
- 2) has a primary Standard Industrial Classification (SIC) code (as in effect on July 1, 1987) between Major Groups 20 and 39; and
- 3) "manufactured," "processed" or "otherwise used" a toxic chemical listed in 40 C.F.R. § 372.65, in excess of the threshold quantities stated under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25, during the calendar year for which reporting is required to:

complete and submit a toxic chemical release inventory reporting EPA Form R (Form R) for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the next calendar year.

2. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site and that are owned or operated by the same person.
3. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.
4. Section 313(b)(1)(C)(ii) of EPCRA, 42 U.S.C. § 11023(b)(1)(C)(ii), defines "process" to mean the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (I) in the same form or physical state as, or in a different form or physical state from, that which it was received by the person so preparing the chemical, or (II) as part of an article containing the toxic chemical.

5. Eagle Brass Company ("Respondent") is a privately owned company with its principal place of business located at 1243 Old Bernville Road, Leesport, Pennsylvania.
6. At all times relevant to the Complaint, Respondent owned and operated a manufacturing operation located on 1243 Old Bernville Road, Leesport, Pennsylvania.
7. Respondent's manufacturing operation, located on 1243 Old Bernville Road, Leesport, Pennsylvania is a "facility" under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3. (hereinafter the "Facility").
8. Respondent had 10 or more full-time employees at the Facility during each of the calendar years 2010, 2011, and 2012.
9. Respondent's Facility had a primary SIC code of 3331 during each of the calendar years 2010, 2011, and 2012.
10. Respondent's SIC code of 3331 falls between Major Group SIC Codes of 20 and 39 (as in effect on July 1, 1987).
11. Copper is a "toxic chemical" as defined by 40 C.F.R. § 372.3 and listed in 40 C.F.R. § 372.65.
12. Pursuant to Section 313(f)(1) of EPCRA, 42 U.S.C. § 11023(f)(1) and 40 C.F.R. § 372.25, the threshold quantity for a toxic chemical which is "processed" at a "facility" in calendar year 1989 and thereafter is 25,000 pounds.
13. EPA conducted a June 3, 2014 through July 17, 2014 review of Respondent's compliance, at the Facility, with the requirements of EPCRA Section 313 and 40 C.F.R. Part 372.

14. Respondent "processed" more than 25,000 pounds of copper at the Facility in calendar year 2010.
15. Respondent did not submit a completed toxic chemical release form (Form R) for the toxic chemical copper that it processed at the Facility during the 2010 calendar year to the Administrator of EPA or to the Commonwealth of Pennsylvania (hereinafter "State") by July 1, 2011.
16. Respondent's failure to submit the required toxic chemical release form (Form R) to the Administrator of EPA or to the State for the toxic chemical copper, by July 1, 2011, is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

COUNT II

17. The preceding paragraphs are incorporated by reference.
18. Respondent "processed" more than 25,000 pounds of the toxic chemical copper at the Facility in calendar year 2011.
19. Respondent did not submit a completed toxic chemical release form (Form R) for the toxic chemical copper that it processed at the Facility during the 2011 calendar year to the Administrator of EPA or to the State by July 1, 2012.
20. Respondent's failure to submit the required toxic chemical release form (Form R) to the Administrator of EPA or to the State for the toxic chemical copper, by July 1, 2012, is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

COUNT III

21. The preceding paragraphs are incorporated by reference.

22. Respondent "processed" more than 25,000 pounds of the toxic chemical copper at the Facility in calendar year 2012.
23. Respondent did not submit a completed toxic chemical release form (Form R) for the toxic chemical copper that it processed at the Facility during the 2012 calendar year to the Administrator of EPA or to the State by July 1, 2013.
24. Respondent's failure to submit the required toxic chemical release form (Form R) to the Administrator of EPA or to the State for the toxic chemical copper, by July 1, 2013, is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

PROPOSED PENALTY

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C § 3701 and 40 C.F.R. Part 19, any person who violates any requirements of Section 313) of EPCRA, 42 U.S.C. § 11023, shall be liable to the United States for a civil penalty in an amount not to exceed \$37,500 for each such violation; that each day a violation continues under Section 313) of EPCRA, 42 U.S.C. § 11023, constitutes a separate violation; and that civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by administrative order. On the basis of the violations of EPCRA described above, Complainant has determined that Respondent is subject to civil penalties under EPCRA Section 325, 42 U.S.C. § 11045. Accordingly, Complainant proposes to assess penalties in the amount of \$38,360 pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as set forth below:

COUNT I: Failure to submit a toxic chemical release form for the toxic chemical copper for the 2010 reporting year constitutes a “Circumstance Level 1” violation (failure to report in a timely manner). For reporting year 2010, Respondent had less than 50 employees at the Facility and processed less than ten times the threshold quantity for copper, which constitutes an “Extent Level C” violation.

Count I Penalty: \$7,090

COUNT II: Failure to submit a toxic chemical release form for the toxic chemical copper for the 2011 reporting year constitutes a “Circumstance Level 1” violation (failure to report in a timely manner). For reporting year 2011, Respondent had less than 50 employees at the Facility and processed more than ten times the threshold quantity for copper, which constitutes an “Extent Level B” violation.

Count II Penalty: \$24,080

COUNT III: Failure to submit a toxic chemical release form for the toxic chemical copper for the 2012 reporting year constitutes a “Circumstance Level 1” violation (failure to report in a timely manner). For reporting year 2012, Respondent had less than 50 employees at the Facility and processed less than ten times the threshold quantity for copper, which constitutes an “Extent Level C” violation.

Count III Penalty: \$7,090

TOTAL PROPOSED PENALTY \$38,360

The proposed penalty was determined in accordance with EPA's April 12, 2001 Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act (1986), The Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. § 2461, *et seq.*, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19. The proposed penalty does not constitute a “demand” as that term is used in the Equal Access to Justice Act, 28 U.S.C. § 2412.

QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the *Consolidated Rules of Practice*, Respondent may resolve this proceeding at any time by paying, in full, the specific penalty proposed in this Complaint or in Complainant's subsequent prehearing exchange. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules of Practice, no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules of Practice, the Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Joyce A. Howell (3RC30), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the *Consolidated Rules of Practice*.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the *Consolidated Rules of Practice*, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by the Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

Payment of the penalty shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. Payment by Respondent shall reference Respondents' name, address and the Docket Number of this action (*Docket No. EPCRA-03-2015-0127*).
- b. All checks shall be made payable to "**United States Treasury**".
- c. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Customer service contact: 513-487-2091

- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

- h. On-Line Payment Option

WWW.PAY.GOV/paygov/
Enter **sfo 1.1** in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

At the time of payment, Respondent simultaneously shall send a notice of payment, *including a copy of the check or other instrument of payment, as applicable, to:*

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029;

and to

Joyce A. Howell (3RC30)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent may request, within 20 days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint. At such hearing, Respondent may contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written answer ("Answer") within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) a statement of the facts which constitute the grounds of a defense; (2) a concise statement of the facts which Respondent intends to place at issue in any hearing; and (3) a statement of whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered to be admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to Answer shall result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be conducted in accordance with EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, (hereinafter "Consolidated Rules"), a copy of which is enclosed. Respondent must send any Answer and request for a hearing to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to attempt to arrive at a settlement. To request an informal settlement conference, please contact Joyce A. Howell (3RC30), Senior Assistant Regional Counsel, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, telephone (215) 814-2644.


Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and request for hearing must be submitted as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement in an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee, the Regional Judicial Officer. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, the Office of the EPA Assistant Administrator for the Office of Solid Waste and Emergency Response, and the Office of the EPA Assistant Administrator for Office of Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an ex parte communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules, 40 C.F.R. Part 22, prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer, after issuance of a Complaint.

Dated: 6.1.15



John A. Armstead, Director

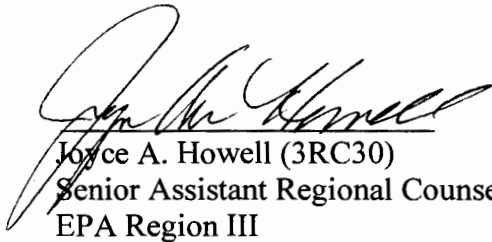
CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by UPS Next Day Delivery, a copy of this Complaint, a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, a copy of EPA's April 12, 2001 Enforcement Response Policy for Section 313 of Emergency Planning and Community Right-to Know Act (1986), a copy of the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 and the November 16, 2009 Kelley Memorandum, "Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule" to the addressee(s) listed below. The original and one copy of this Complaint, and of each of the additional documents identified above, were hand-delivered to, and filed with, the Regional Hearing Clerk, U.S. EPA Region III.

Mr. Charles J. Bernard, President
Eagle Brass Company
1243 Old Bernville Road
Leesport, Pennsylvania 19533 – 9115

James E. Gavin, Esq.
Masano Bradley
Suite 201
1100 Berkshire Boulevard
Wyomissing, PA 19610

Dated: Jun 4, 2015


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

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