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October 26, 2009

VIA FEDERAL EXPRESS

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

RE: In the Matter of Eastern Alloys  
Docket No. EPCRA-02-2009-4002

Dear Sir/Madam:

Enclosed for filing are an original and one copy of our answer to the Administrative Complaint in the above-referenced matter, together with a Certification of Service.

If you have any questions, please do not hesitate to call or e-mail.

Very truly yours,

Kevin M. Young

Enclosure (original and one copy)

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 OCT 27 11:12:00  
REGIONAL HEARING  
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

_____ )	
IN THE MATTER OF: )	
Eastern Alloys, Inc. )	Docket No. EPCRA-02-2009-4002
7 Henry Henning Drive )	Administrative Complaint Under
Maybrook, New York 12543 )	Section 325 of the Emergency Planning
Respondent )	and Community Right-to-Know Act
)	42 U.S.C. § 11045
_____ )	

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 OCT 27 11:12:00  
REGIONAL HEARING  
CLERK

ANSWER TO ADMINISTRATIVE COMPLAINT

Respondent Eastern Alloys, Inc. (Respondent) submits this answer in response to the Administrative Complaint, dated September 28, 2009 (the Complaint), submitted by the United States Environmental Protection Agency (EPA).

I. STATUTORY AUTHORITY

1. Respondent neither admits nor denies the allegations contained in paragraph 1 of the Complaint and refers to the statute cited therein for its contents.
2. Respondent refers to the statute cited in paragraph 2 of the Complaint for the contents thereof.
3. Respondent refers to the statutes and regulations cited in paragraph 3 of the Complaint for the contents thereof.

II. FINDINGS OF VIOLATIONS

4. Respondent admits that it is a corporation and that corporations are among the entities identified as a "person" within the meaning of EPCRA § 329(7), 42 U.S.C. § 11049(7).
5. Respondent admits it is the owner and/or operator of a facility located at 7 Henry Henning Drive, Maybrook, New York 12543 and refers to the statute cited in Complaint for the contents thereof.
6. See Response to paragraph 5 above. Upon information and belief, EPA inspected the facility on March 25, 2009 not May 25, 2009 as referenced in the Complaint.

7. Respondent refers to the statutes and regulations cited in the Complaint for the contents thereof.

8. Respondent admits that since at least 2006 it has stored diesel fuel, liquefied petroleum gas, zinc and zinc skimmings at the facility in amounts exceeding 10,000 pounds.

9. Respondent admits that in 2007 its understanding was that it was required under OSHA to prepare or have available MSDS for diesel fuel, liquefied petroleum gas, zinc and zinc skimmings and refers to the statutes and regulations cited in the paragraph 9 Complaint for the contents thereof.

10. Respondent admits that in 2008 its understanding was that it was required under OSHA to prepare or have available MSDS for diesel fuel, liquefied petroleum gas, zinc and zinc skimmings and refers to the statutes and regulations cited in paragraph 10 of the Complaint for the contents thereof.

11. Respondent admits that on March 25, 2009 an EPA inspector reminded Respondent of the need to file emergency and hazardous chemical inventory forms for calendar year 2007 and 2008 and that Respondent filed Tier II forms with the LEPC and SERC later the same day and with the local fire department on March 31, 2009.

12. Respondent admits the allegations contained in paragraph 12 of the Complaint.

13. Respondent admits the allegations contained in paragraph 13 of the Complaint.

14. Respondent admits the allegations contained in paragraph 14 of the Complaint.

#### COUNT I

15. Respondent incorporates its responses to the allegations contained in Paragraphs 1 through 14 by reference.

16. Respondent admits the allegations contained in paragraph 16 of the Complaint.

17. Respondent neither admits nor denies the allegations contained in paragraph 17 of the Complaint.

#### COUNT II

18. Respondent incorporates its responses to the allegations contained in Paragraphs 1 through 14 by reference.

19. Respondent admits the allegations contained in paragraph 19 of the Complaint.

20. Respondent neither admits nor denies the allegations contained in paragraph 20 of the Complaint.

### **RESPONDENT'S GROUNDS FOR OPPOSING PROPOSED RELIEF**

Respondent believes that the penalties sought for its alleged violations of EPCRA § 312 are excessive in light of the facts in this case. The EPCRA Penalty Policy considers the nature, circumstances, extent and gravity of the violations in setting the base penalty. EPA then considers various discretionary factors in assessing the final penalty (e.g., prior history, culpability, other factors as justice may require). For the foregoing reasons, we believe the penalty should be significantly reduced, if not eliminated.

1. **EPA's gravity component of the base penalty calculation is too high.** EPA has placed Respondent in Matrix Level A in assessing gravity based on the fact that the quantity of zinc on-site exceeded the 10,000 lb. threshold by more than 10 times. However, the remaining three substances were in the Level B and Level C categories. That factor should be taken into account and the violation assessed at Gravity Level B not A.

Looking at the issue of gravity more generally, Respondent's alleged omission did not pose a significant risk to the community or emergency responders.

- As discussed in item 3 below, Respondent's previous Tier II submissions provided an accurate picture of substances store at the facility.
  - As EPA previously noted in communications with Respondent, none of the substances involved are "extremely hazardous substances" nor do they present a substantial risk to the community. The zinc is stored in large pieces and blocks of solid metal that pose no risk to the community or responders. Although the zinc presents a physical risk in its molten state, it does not pose a health hazard to the community or to responders.
  - The zinc skimmings are stored in multiple steel totes that contain 2,000 to 4,000 pounds each (rather than in a single large pile). This method reduces the risks associated with storage.
  - Both the diesel fuel and propane are stored in tanks that are located in the front of Respondent's facility at some distance from the main building. As a result, the tanks are readily visible to any emergency responders arriving at the site.
  - The facility is isolated from the community. The closest commercial establishment is about one-tenth of a mile from the facility and the nearest residences are approximately one-eighth a mile away. As a result, there is virtually no potential for an incident at the facility to affect the surrounding community.
2. **EPA should increase the adjustment based on Respondent's cooperation in this matter.** Respondent has cooperated with EPA during every stage of this matter. Within hours of the inspection, Eastern posted the required information on the SERC website, to be shared with the LEPC, along with additional information requested by the LEPC. Eastern forwarded the "E-Plan" "first Responder View" information to the local fire department a few days later. In subsequent communications with EPA representatives, Respondent made every effort to provide any requested information quickly. This

10/10/2009

**3. EPA should take account of “other factors as justice may require” and further reduce the penalty.**

- Respondent’s basic activities do not change from year-to-year; as a result, its delay in submitting its Tier II data did not deprive emergency responders of crucial information needed to respond to an incident at the facility. Respondent is a secondary zinc smelting facility. In conjunction with this activity, the facility stores liquefied petroleum gas (i.e., propane) and diesel fuel in tanks; it also stores zinc and zinc skimmings in conjunction with its zinc smelting operations. The types of substances stored on site do not change at all from one year to the next. Although the maximum quantities onsite may change somewhat, these changes are not significant from a Tier II/emergency response perspective. In this respect, Respondent differs significantly from Tier II filers whose operations vary from one year to the next, making current information crucial from an environmental and safety perspective.<sup>1</sup>
- Like many manufacturing facilities, Respondent is currently struggling to survive in the difficult economy. The facility currently employs 55 people; it laid off 8 people in January 2009, which represents about 12-13% of its workforce. Currently, all managers and office staff have been required to reduce their hours several days per month, with a corresponding reduction in pay. Although Respondent’s annual sales may exceed \$20 million (the threshold for a small business identified in the EPCRA Penalty Policy), the zinc smelting business is a high volume, low margin business, making it more akin to a small business than numbers might suggest. As a result, any profits earned on those sales are extremely low. In the current economic climate, business is down 40%, and in the 12 months ending September 30<sup>th</sup>, Respondent was operating at a \$3,000,000 loss. In these circumstances, paying a penalty will impose a significant hardship on the company.
- Respondent currently provides a living wage with health insurance and pension benefits to the 55 employees at the facility and hopes to rehire the employees that were laid off in January when and if its business returns. The tenure of the average employee is 18 years.
- Respondent has operated a manufacturing facility at the current location since 1965. Respondent currently pays \$51,704 in local property tax, including \$9,533 to the local fire department.
- Respondent did not avoid any costs or expenses in conjunction with the delay in filing.
- Respondent retained Young Sommer to track its environmental reporting obligations. Due to change in staff at Young Sommer, Young Sommer failed to notify Respondent in 2007 and 2008 that these reports were due.

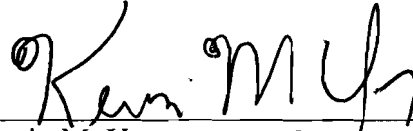
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<sup>1</sup> As EPA is aware, the information in a Tier II report may be more than a year old, even when it is submitted on time; because Respondent’s operations do not change meaningfully from year-to-year, the information provided in the 2006 Tier II submission is arguably of the same quality as that contained in a newer submission.

HEARING

Respondent requests a hearing in this matter.

Dated: October 26, 2009



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Office of Regional Counsel  
U.S. Environmental Protection Agency  
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cc: Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
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(Original and one copy)

