



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Via UPS Overnight

September 1, 2015

Ms. Sybil Anderson  
Headquarters Hearing Clerk  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Avenue, NW  
Washington, DC 20004

Re: IMO Eagle Brass Company, Docket No. EPCRA-III-2015-0127

Dear Ms. Anderson:

Enclosed for filing please find the original and one copy of the Complainant's Motion for Accelerated Decision and to Strike Affirmative Defenses and the Exhibits and Affidavit of Craig Yussen in support of the Motion. Under cover of this letter I am copying counsel for Respondent with the same. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joyce A. Howell".

Joyce A. Howell  
Sr. Assistant Regional Counsel  
USEPA Region 3  
[howell.joyce@epa.gov](mailto:howell.joyce@epa.gov)

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cc: James Gavin, Esq.  
Craig Yussen 3LC61





4. On June 2, 2014, Abraham Reich, an employee under EPA's Senior Environmental Employee program, telephoned Eagle Brass Company and spoke with John Anderton, Operations Manager at Eagle Brass Company. Based on information obtained from Mr. Anderton during this telephone call, EPA issued a Request for Information letter ("RFI") to Respondent requesting information to evaluate Eagle Brass Company's compliance status with EPCRA Section 313.

5. Eagle Brass Company submitted a response to the RFI, portions of which are attached to the Brief as Exhibits 1, 2, 5, 6, and 7.

6. EPCRA Section 313 and 40 C.F.R. § 372.30 require the owners and operators of certain facilities; i.e., those that have more than ten full-time employees, SIC codes of 20-39 (2000 - 3900), and that manufacture, process, or otherwise use a listed toxic chemical during any calendar year in excess of the threshold quantity specified in 40 C.F.R. § 372.25, to submit annually a Toxic Chemical Release Inventory Form ("Form R") for each toxic chemical by July 1 of the following year to EPA and the State where the facility is located. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

7. Respondent is in the business of rerolling metal coils into smaller sizes. *See* Complainant Exhibit 2, RFI Response 7. Within the context of EPCRA Section 313, Respondent's rerolling activity falls within EPCRA's definition of "Processing" 40 CFR § 372.3, because the facility's production activity entails the preparation of the metal products for distribution to other facilities. Some of the metal coils processed by Respondent are a metal alloy primarily made out of copper and nickel. Complainant Exhibit 6.

8. Based on Respondent's RFI response, I determined that during calendar years 2010 – 2012, Respondent had more than ten employees. *See* Exhibit 2, RFI Response No. 3.

9. Respondent's does not contest its primary SIC code falls between SIC Codes 20-39 (2000 - 3900). Answer ¶ 9.

10. Respondent's RFI response contained some errors. Respondent's answer to RFI 1 identified Eagle Brass' SIC Code as the Chemical Abstract Service number for nickel. Complainant Exhibit 2, Response No.1.

11. Another error in Eagle Brass' RFI response was contained in its RFI responses 4 & 5. RFI 4 asks for "A list of all chemicals and amounts (lbs.) subject to EPCRA Section 313 manufactured (either directly or incidentally), processed, or used at the facility during years 2010, 2011, and 2012. RFI 5 asks for "Throughput data of all raw materials containing chemicals subject to EPCRA Section 313 for years 2010, 2011, 2012." Complainant Exhibit 1. Respondent's RFI Response 4 states: "4. 2010 - 491,121 / 2011 – 711,314 / 2012 – 526,669. Complainant Exhibit 2. When RFI Response 4 is compared to RFI Response 5, there is an obvious error since the quantities Respondent stated for the amount of EPCRA 313 materials manufactured, processed or otherwise used exceeds the total of raw materials used. I used the lower of the two sets of numbers from the RFI Responses to calculate the amount of copper processed at Respondent's facility during 2010 – 2012.

10. Copper is a toxic chemical under EPCRA Section 313. There are no metal alloys on the EPCRA Section 313 toxic chemical list found at 40 C.F.R. § 372.65

11. Respondent provided both an MSDS for the copper/nickel alloy it processes at its facility as well as Material Test Reports. These documents indicate the amounts, by percentage, of copper and nickel contained in the alloy. I reviewed the MSDS and Material Test Reports and used the Material Test Report which stated the lowest percentage of copper in the alloy. I multiplied this percentage against the total amount of the copper/nickel alloy processed each year (as described in the immediate previous paragraph) in 2010, 2011 and 2012 to determine the amount of copper processed at the Eagle Brass facility during those years.

12. My calculations indicated Eagle Brass processed more than 25,000 pounds of copper in calendar years 2010, 2011 and 2012 as indicated in the Table below.

Year	Total Throughput of nickel/copper alloy	Total Copper Processed	Total Copper Transferred Offsite as Scrap
2010	363,365	199,124	105,573
2011	561,482	307,692	101,891
2012	403,210	220,959	109,361

13. The values in the third column of the Table above were obtained from corrected Form Rs submitted by Respondent for 2010, 2011 and 2012 on November 24, 2014, after EPA's first enforcement contact with Respondent on June 2, 2014. *See* Complainant Exhibit 9.

14. I reviewed EPA's online public database, Envirofacts, and determined that Respondent had not filed a Form R for copper to EPA for calendar years 2010, 2011, and 2012 on or before the statutory deadlines for submitting the forms.

15. Item 6 of the Eagle Brass RFI Request (Complainant Exhibit 5) is a Material Safety Data Sheet ("MSDS") from PMX Industries, Inc. dated December 15, 2004. Page 5 of this MSDS, at Section 15.0, recites "These alloys contain the following toxic chemical(s) subject to reporting requirements under this section of SARA and 40 CFR 372." The table immediately following on this Material Safety Data Sheet lists copper and nickel.

16. EPA's records of Respondent's EPCRA Section 313 reporting history shows that Respondent began filing timely Form Rs for copper in 1987 and continued (with the exception of 1990), until 1992, when Respondent began reporting only for nickel from 1993 through 2003. Respondent did not file Form Rs again until 2011, and again reported only for nickel. *See* Complainant Exhibit 10. It should be noted that the spreadsheet attached at Complainant Exhibit 10 also lists the corrected Form Rs filed by Respondent on November 24, 2014 after EPA made its initial enforcement contact with Respondent. Copies of the corrected Form Rs are attached to the Brief as Complainant Exhibit 9.

17. EPA publishes extensive support materials to assist the regulated community in filing Form Rs. Until 2006 EPA mailed line-by-line instructions to Form R filers. EPA also publishes these materials on-line at <http://www.epa.gov/tri>. 40 C.F.R. § 372.85(a). This web site also contains instructional materials, sector guidance and webinars on how to complete and file a Form R. For example: <http://www2.epa.gov/toxics-release-inventory-tri-program/tri-meweb-tutorials>, or <http://www2.epa.gov/sites/production/files/tri/TutorialMOVs/how-to-prepare-submit-tri-forms.mov>.

18. EPA's published instructions for completion of Form Rs for calendar years 2010, 2011 and 2012. The Form R completion instructions for each of these calendar year notes alloys are mixtures and includes instructions on how to fill out the Form R for a mixture containing a toxic chemical. *See* Complainant Exhibit 12.

19. For each of the reporting years 2010, 2011, and 2012, over 21,700 facilities successfully submitted Form Rs.

20. The Exhibits attached to the Brief are true copies of the originals and are gathered and maintained by EPA in accordance with its statutory authorizations and in the regular course of business.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signed:

Name:

Title:

Dated:



Craig Yussen

Chemical Engineer, USEPA Region 3

September 1, 2015

