

**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.	:	
	:	
	:	
	:	

**COMPLAINANT’S REPLY BRIEF IN SUPPORT OF
COMPLAINANT’S MOTION FOR ACCELERATED DECISION AS TO LIABILITY
AND TO STRIKE AFFIRMATIVE DEFENSES**

Respondent’s response brief to Complainant’s motion for accelerated decision as to liability and to strike affirmative defenses fails to raise an issue of material fact but rather is an admission of liability. As stated by Respondent:

The forms submitted to the EPA contained a precise statement of the amount of an alloy that [Respondent] processed containing nickel and copper. The Eagle Brass Company does not and did not process pure nickel and copper. It processed an alloy. Although the information was correct, it was designated as nickel and not an alloy. If there was an error of incorrect designation and not a failure to report.

Respondent’s Brief at 2. Respondent further concedes that at best, Respondent is liable for an act of misfeasance. *Id.* at 7. ¹

Respondent did not file a Form R for Copper for Reporting Years 2010 - 2012.

When errors are detected in Form Rs, the reporter has an opportunity to correct the error. Yussen Reply Affidavit at ¶ 3 - 4. When Form R reporters submitted paper Form Rs to EPA, if an error was detected, EPA issued a “Notice of Technical Error”, later called a “Notice of Significant Error.” The Form R reporter was given an opportunity to correct the error detected. Likewise, since the implementation of the Electronic Filing Rule, 78 Fed. Reg. 52860 (Aug. 27, 2013), the electronic filing system alerts the reporter to an invalid entry and request the reporter re-input the data. *Id.*, Yussen Affidavit. In neither case would Respondent’s “incorrect designation” have been detected as a filing error. *Id.*

In this instance, EPA would not and did not detect an error in Respondent’s Form R submissions until such time as EPA performed a specific review of Respondent’s data. EPA had no basis to know Respondent’s reporting was inaccurate because it choose to call its alloy “nickel” for purposes of reporting, and Respondent further certified that the information it submitted was accurate. Complainant’s Moving Brief, Exhibit 8.

As set forth in Complainant’s moving brief, EPCRA is a strict liability statute, meaning there are few, if any, excuses to liability for noncompliance. *In re Steeltech, Ltd.*, 8 E.A.D. 577, 586 (EAB 1999) *affirmed*, 273 F. 3d 652 (6th Cir. 2001). EPCRA Section 313 requirement is

¹ Respondent may have also engaged in misplaced thrift. The Commonwealth of Pennsylvania assess a fee of \$250 for each Form R submitted, and thus filing one Form R for its alloy, designated as ‘nickel’ saved Respondent an additional \$250 filing fee. EPA does not assess such a fee. Yussen Reply Affidavit at ¶ 5.

specific in this regard, that regulated entities file a Form R for **each toxic chemical**. 42 U.S.C. § 11023(a)(emphasis added).

Penalties for Violation of EPCRA Section 313 are authorized by law.

Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) expressly authorizes the imposition of penalties for violation of EPCRA Section 313. Moreover, EPCRA expressly authorizes the Administrator of EPA to prescribe such regulations as may be necessary to carry out the EPCRA statute. Section 328 of EPCRA, 42 U.S.C. § 11048. Respondent's reliance on 40 C.F.R. § 370.30 is both inaccurate and misleading. See Respondent's Brief at 5 – 6. The Administrative Complaint in this matter cites 40 C.F.R. Part 372. Violators of EPCRA Section 313 as implemented by 40 C.F.R. Part 372 are subject to a penalty under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

An Administrative Complaint is the Appropriate Enforcement Response

A Civil Administrative Complaint is the appropriate response for failure to report in a timely manner. EPA's April 12, 2001 Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act, 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. (hereinafter "Penalty Policy") Penalty Policy at 4 (Attached to Respondent Exhibit 2). Respondent characterizes its violation as an error in filling out a form and/or the form should allow Respondent to report its alloy, rather than reporting for each of the toxic chemicals, copper and nickel, that are contained in the alloy, despite the statute's

requirement that each toxic chemical be reported. The Administrative Complaint alleges non-reporting for the toxic chemical copper, not that Respondent is guilty of a typographical error.

Respondent ignores the Penalty Policy provision which expressly reserves the right of the Agency to assess a Civil Administrative Complaint for certain data quality errors, including failure to calculate or provide reasonable estimates of release or offsite transfer, failure to use all readily available information necessary to calculate as accurately as possible, releases or off-site transfer. Penalty Policy at 4, 5.

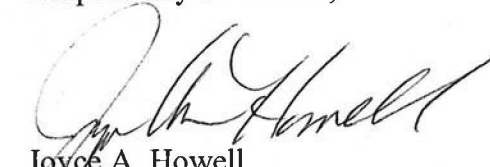
Moreover, Respondent's vague assertion contained in the Affidavit of Jonathan H. Anderton, that an EPA inspector reviewed Eagle Brass' records "sometime in the last ten years" is irrelevant to the present action. Even though EPA Region III has no record of such an inspection, Yussen Reply Affidavit at 2, any representations of an EPA inspector contrary to law are not binding on EPA. *In re Clarksburg Casket*, 8 E.A.D. 496, 507, n.16 (EAB 1999)

Because EPA has extended considerable enforcement resources to obtain compliance, and Respondent's failure to report copper would have gone undetected but for EPA's investigation of Respondent, and Administrative Complaint and the request for the imposition of a penalty upon finding of liability was the appropriate enforcement response by EPA.

Conclusion

For the reasons stated herein and in Complainant's moving papers, Complainant respectfully requests the entry of judgment as to liability against Respondent and further requests the Court to strike Respondent's affirmative defenses.

Respectfully submitted,



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September 22, 2015