

**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 PRE-HEARING EXCHANGE

Pursuant to the Court’s Order dated August 27, 2015, the undersigned counsel for Complainant, the United States Environmental Protection Agency (EPA), submits the following Pre-Hearing Exchange:

1.(A) Complainant’s Witness

Craig Yussen: Mr. Yussen is employed as a Chemical Engineer in EPA Region 3. Mr. Yussen is the Team Leader for Section 313 of the Emergency Planning and Community Right to Know Act, Regulatory Enforcement, 42 U.S.C. § 11043 (EPCRA Section 313) in the Land and Chemicals Division, Office of Land Enforcement. Mr. Yussen has served in this position for approximately 22 years.

Mr. Yussen’s responsibilities as Team Leader for the EPCRA Section 313 Enforcement Team are to conduct investigations, including on-site inspections, of facilities subject to EPA statutes and regulations; analyze technical information obtained from EPA inspections, EPA technical manuals and reports, and from other sources, evaluate the compliance status of facilities; prepare

or assist in the preparation of inspection reports, administrative orders and agreements and other agency documents; review, comment and concur on the inspection reports, administrative orders and agreements and other agency documents prepared by others.

Mr. Yussen has had primary responsibility for the investigation of Respondent Eagle Brass Company for EPCRA Section 313 compliance since his assignment to the case in 2014. Mr. Yussen will testify as to the facts supporting the allegations in the Administrative Complaint and the calculation of the proposed penalty.

1.(B) Documents and Exhibits to Be Introduced as Evidence

The documents Complainant intends to introduce as evidence at the hearing in this matter have been filed concurrently with this document.

1(C) Location of the Hearing, Time for Hearing and Need for Translation Services

Complainant respectfully suggests Philadelphia, Pennsylvania as the location for the hearing in this matter since the facility for a hearing can be easily arranged and the Complainant's witness is located in Philadelphia and Respondent's witnesses are located approximately 74 miles away from Philadelphia in Leesport, Pennsylvania.

Complainant respectfully requests three hours for Complainant to present its case on liability and another hour for Complainant to present its case as to penalty, should the Court determine Respondent is liable for the allegations contained in the Administrative Complaint.

Complainant does not require translation service.

2.(A) Service of the Complaint was made in accordance with 40 C.F.R. § 22.5(b)(1)

Service of the Administrative Complaint (Complaint) on Respondent was made via UPS next day delivery, with adult (over age 21) signature required. The package containing the Complaint was addressed to Mr. Charles J. Bernard, the president of Respondent, at

Respondent's place of business. The package containing the Complaint was signed for by a person with the last name of "Davis" at the office of Respondent's place of business. As a courtesy, a copy of the Complaint and the attachments thereto was also sent to Respondent's counsel, Mr. James Gavin.

As noted in the Certificate of Service signed by Complainant's counsel, the Complaint was served with the following documents:

- Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22;
- EPA's April 12, 2001 Enforcement Response Policy for Section 313 of Emergency Planning and Community Right-to Know Act (1986);
- The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19;
- The November 16, 2009 Kelley Memorandum, "Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule."

Documentation demonstrating Complainant's compliance with 40 C.F.R. § 22.5(b)(1) is included as Attachment 1.

2.(B) Respondent is liable for violations of EPCRA Section 313

- (i) 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 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 set forth in 40 C.F.R. § 372.25, to submit annually 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.

- (ii) During calendar years 201, 2011 and 2012, Respondent has more than ten employees. [CX 2, Answer ¶ 8].
- (iii) During calendar years 201, 2011 and 2012, Respondent has an SIC Code of 20 – 39 (2000 - 3900). [Answer ¶ 9].
- (iv) Copper is toxic chemical within the context of EPCRA Section 313. 40 C.F.R. § 372.65.
- (v) Respondent received information from its supplier indicating that toxic chemicals were contained in the mixture supplied to Respondent. [CX 4, CX 5].
- (vi) The information respondent received from its supplier was contained in an MSDS and also Material Data and Certificates of Compliance. [CX 4, CX 5].
- (vii) Respondent was obligated to determine the amount of each toxic chemical contained in the mixtures it processed. 40 C.F.R. § 372.30(b)(1) and (2).
- (viii) The threshold amount for reporting copper processed at a facility is 25,000 pounds per year. 40 C.F.R. § 372.25(a).
- (ix) Respondent processed over 25,000 pounds of copper in 2010. [CX 2, CX 3].
- (x) Respondent processed over 25,000 pounds of copper in 2011. [CX 2, CX 3].
- (xi) Respondent processed over 25,000 pounds of copper in 2012. [CX 2, CX 3].
- (xii) Respondent did not file a Form R for copper with EPA or the Commonwealth of Pennsylvania by July 1, 2011 for the 2010 reporting year until November 14, 2014. [CX 7, CX 9].

- (xiii) Respondent did not file a Form R for copper with EPA or the Commonwealth of Pennsylvania by July 1, 2012 for the 2011 reporting year until November 14, 2014. [CX 7, CX 9].
- (xiv) Respondent did not file a Form R for copper with EPA or the Commonwealth of Pennsylvania by July 1, 2013 for the 2012 reporting year until November 14, 2014. [CX 7, CX 9].

2.(C - D) 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. Complainant proposes, upon the Court finding Respondent liable for the allegations in the Complaint, that the Court assess a civil penalty under EPCRA Section 325, 42 U.S.C. § 11045. Accordingly, Complainant has calculated a proposed penalty in the amount of \$38,360 pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), in accordance with 1) the EPA April 12, 2001 Enforcement Response Policy for Section 313 of Emergency Planning and Community Right-to-Know Act (1986) [CX17]; 2) The Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 [CX 19]; and, 3) the November 16, 2009 Kelley Memorandum, “Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule” [CX 18], 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 [CX 20].

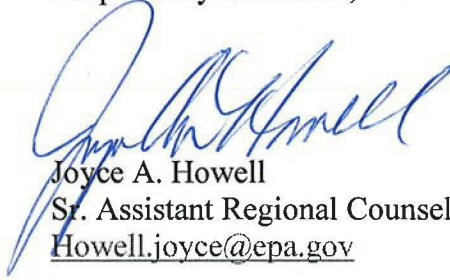
- (i) Respondent had less than 50 employees in calendar years 2010, 2011, and 2012. [CX 2].
- (ii) Respondent processed 199,124 pounds of copper in calendar year 2010. [CX 20].
- (iii) Respondent processed 307,692 pounds of copper in calendar year 2011. [CX 20].
- (iv) Respondent processed 220,959 pounds of copper in calendar year 2012. [CX 20].
- (v) Respondent did not file a Form R for copper with EPA or the Commonwealth of Pennsylvania by July 1, 2011 for the 2010 reporting year until November 14, 2014. [CX 7, CX 9].
- (vi) Respondent did not file a Form R for copper with EPA or the Commonwealth of Pennsylvania by July 1, 2012 for the 2011 reporting year until November 14, 2014. [CX 7, CX 9].

- (vii) Respondent did not file a Form R for copper with EPA or the Commonwealth of Pennsylvania by July 1, 2013 for the 2012 reporting year until November 14, 2014. [CX 7, CX 9].
- (viii) Respondent has not claimed that it is unable to pay the proposed penalty. *See Answer.*

2.(E). EPA Guidance Documents, Policies, and Preambles to Applicable Regulations

- (i) EPA April 12, 2001 Enforcement Response Policy for Section 313 of Emergency Planning and Community Right-to Know Act (1986). [CX 17].
- (ii) Civil Monetary Penalty Inflation Rule, 73 Fed. Reg. 75340 – 75346 (December 11, 2008). [CX 19].
- (iii) The November 16, 2009 Memorandum, “Adjusted Penalty Policy Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule.” (“Kelley Memorandum”)(excerpts). [CX 18].
- (iv) Toxic Chemical Release Reporting, Community Right-to-Know, 53 Fed. Reg. 4500 – 4554 (February 16, 1988). [CX 22].
- (v) Electronic Reporting of Toxics Release Data, 78 Fed. Reg. 52860 – 52868 (August 27, 2013). [CX 23].
- (vi) Toxic Chemical Release Inventory Reporting Forms and Instructions for Reporting Years 2010, 2011, 2012. [CX 10, CX 12, CX 14].
- (vii) EPCRA Section 313 Questions and Answers Revised 1998 (excerpts) [CX 16].
- (viii) Delegation 22-3-A (5/11/94), Delegation 22-3-A (9/1/2005) [CX 21].

Respectfully submitted,



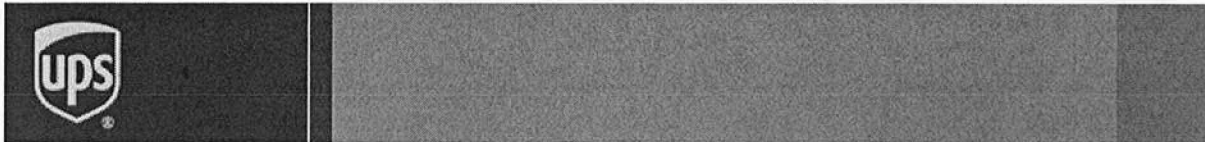
Joyce A. Howell
Sr. Assistant Regional Counsel
Howell.joyce@epa.gov

Dated: October 6 , 2015

Attachment A

Howell, Joyce

From: UPS Quantum View <auto-notify@ups.com>
Sent: Friday, June 05, 2015 9:37 AM
To: Howell, Joyce
Subject: UPS Delivery Notification, Tracking Number 1ZA43F71A291525601



***Do not reply to this e-mail. UPS and US EPA will not receive your reply.

At the request of US EPA, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: 1ZA43F71A291525601
Delivery Date / Time: 05-June-2015 / 9:32 AM
Adult Signature Captured

Delivery Location: OFFICE
Signed by: DAVIS

Shipment Detail

Ship To:
Charles J. Bernard, President
Eagle Brass Company
1243 OLD BERNVILLE RD
LEESPORT
PA
19533
US

Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 3.0 LBS
Reference Number 1: IMO Eagle Brass Company
Reference Number 2: EPCRA-III-2015-0127



ATTN : JOYCE HOWELL
PHONE : (215)814-2644

DELIVERY NOTIFICATION

INQUIRY FROM: JOYCE HOWELL
US EPA
1650 ARCH ST FLR 3 RM 3PM20
PHILADELPHIA PA 19103

SHIPMENT TO: CHARLES J. BERNARD, PRESIDEN
EAGLE BRASS COMPANY
1243 OLD BERNVILLE RD
LEESPORT PA 19533

Shipper Number.....**A43F71**

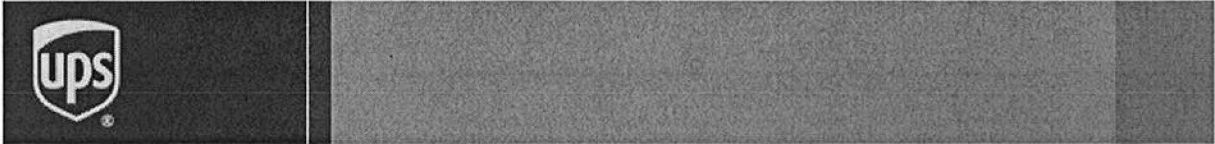
Tracking Identification Number...**1ZA43F71A291525601**

According to our records 1 parcel was delivered on **06/05/15** at **9:32 A.M.**, and left at **OFFICE**. The shipment was signed for by **DAVIS** as follows:

SHIPPER NUMBER	PKG ID NO.	TRACKING NUMBER	ADDRESS (NO/STREET,CITY)	SIGNATURE
A43F71		1ZA43F71A291525601	1243 OLD BERNVILLE RD LEESPORT	<i>Regina Davis</i>

Howell, Joyce

From: UPS Quantum View <auto-notify@ups.com>
Sent: Friday, June 05, 2015 9:58 AM
To: Howell, Joyce
Subject: UPS Delivery Notification, Tracking Number 1ZA43F71A297069139



***Do not reply to this e-mail. UPS and US EPA will not receive your reply.

At the request of US EPA, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: 1ZA43F71A297069139
Delivery Date / Time: 05-June-2015 / 9:47 AM
Adult Signature Captured

Delivery Location: OFFICE
Signed by: PIETROBONE

Shipment Detail

Ship To:
James E. Gavin, Esq.
Masano Bradley
1100 BERKSHIRE BLVD
READING
PA
19610
US
Number of Packages: 1
UPS Service: NEXT DAY AIR
Weight: 2.0 LBS
Reference Number 1: IMO Eagle Brass Company
Reference Number 2: EOCRA-III-2015-0127

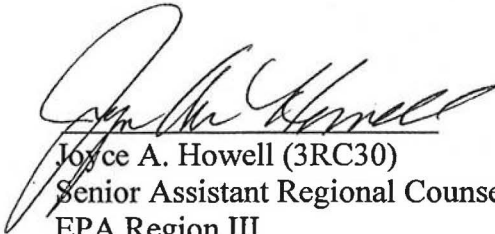
CERTIFICATE OF SERVICE

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

RECEIVED
2015 JUN 04 PM 2:44
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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. :
: _____ :
:

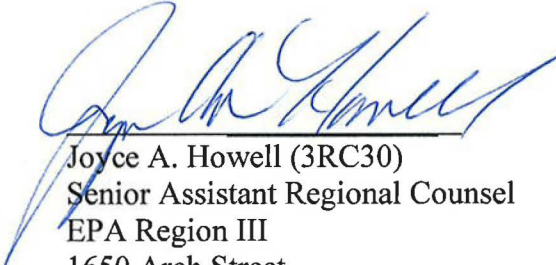
CERTIFICATE OF SERVICE

I certify that on the date noted below, I served, by the method noted, Complainant's Pre-Hearing Exchange to the addressee(s) listed below. Complaint's Pre-Hearing Exchange was also electronically filed on the date noted below, with Sybil Anderson, Headquarters Hearing Clerk, Office of Administrative Law Judges, Ronald Reagan Building, Room M1200, 1300 Pennsylvania Avenue, NW, Washington, DC 20004.

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

Via electronic filing (PreHearing Order p. 6)
Hon. Christine Donelian Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Regan Building, Room M1200
1300 Pennsylvania Avenue, NW
Washington, DC 20004

Dated: October 6, 2015


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