

**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. :
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: Docket No. EPCRA-III-2015-0127
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COMPLAINANT’S REBUTTAL 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 Rebuttal Pre-Hearing Exchange:

- 1. Every Form R report submitted after July 1 for a chemical not previously submitted is not a revision, but failure to report in a timely manner.¹**

Respondent did not file a timely Form R for copper for calendar years 2010 – 2012 even though it had processed copper in amounts greater than the threshold for reporting. Respondent’s violations of EPCRA are not failures “to fill in one box in a form created incorrectly.” Respondent’s Pre-hearing Exchange (RPHX) at 9. Rather, Respondent’s failures, year after year for three years, are violations of the clear requirement of the statute: to file a Form

¹ EPA April 12, 2001 Enforcement Response Policy for Section 313 of Emergency Planning and Community Right-to Know Act (1986) p. 2. *Emphasis in the original.* [CX 17].

R for each listed chemical manufactured, processed, or otherwise used over the reporting threshold in a given calendar year by July 1 of the following year.

Whether misfeasance or nonfeasance, *mens rea* is not pertinent to a finding of liability in this matter, only the facts. Let us be clear on what the facts are. Respondent processed the toxic chemical copper as part of an alloy, in amounts greater than the regulatory threshold amount at its facility in each calendar year from 2010 – 2012. Respondent did not timely file a Form R for any chemical for calendar year 2010. CX7. Respondent filed Form Rs for an alloy it dubbed “nickel” for calendar years 2011 and 2012. Answer ¶¶ 19, 23. After EPA enforcement contact, Respondent filed Form Rs for calendar years 2010 – 2012 for the toxic chemical copper. CX7. Under the EPCRA Enforcement Response Policy, Respondent’s failures are violations of EPCRA Section 313 subject to prosecution in an administrative enforcement action. EPA April 12, 2001 *Enforcement Response Policy for Section 313 of Emergency Planning and Community Right-to Know Act (1986)*, pp. 2, 4.

2. United States Constitution

The Emergency Planning and Community Right-to-Know Act is nearly 30 years old. It was enacted as part of H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986, and signed into law by President Ronald Reagan. EPCRA was enacted with substantial majority votes in both the House of Representatives (386 yea – 27 nay) and the Senate (88 yea – 8 nay).² EPCRA Section 325 authorizes the imposition of penalties for violations of Section 313 of EPCRA. EPA has developed an Enforcement Response Policy, the purpose of which is stated as:

The purpose of this Enforcement Response Policy is to ensure that enforcement actions for violations of EPCRA §313 and the PPA are arrived at in a fair, uniform and consistent

² <https://www.congress.gov/bill/99th-congress/house-bill/2005/actions>

manner; that the enforcement response is appropriate for the violations committed; and that person will be deterred from committing EPCRA §313 violations and the PPA.

EPA April 12, 2001 *Enforcement Response Policy for Section 313 of Emergency Planning and Community Right-to Know Act (1986)* p. 1. [CX 17]. The prosecution of Respondent is entirely consistent with this Policy.

While Respondent concedes that it is not within this Court's jurisdiction to find EPCRA Section 313 unconstitutional on its face, it maintains that as applied to Eagle Brass, the Court is obligated to review Eagle Brass' constitutional challenges as applied to Respondent. RPHX, at 8, fn2. Even if the Court were inclined to conduct an "as-applied" constitutional analysis, Respondent merely states the penalty is "penal and excessive" RPHX at 9, without any further analysis, argument, or evidence demonstrating why its three years of untimely Form R filing should be treated differently, on constitutional grounds, than any other entity regulated under the statute.

It is respectfully submitted that the United States Constitution's requirements as to this action against Eagle Brass, *i.e.*, for due process, have been satisfied. This matter is proceeding under the Consolidated Rules, 40 C.F.R. Part 22, and Respondent has acknowledged that it received proper service of the Complaint. RPHX at 1.

3. Corrections

Respondent maintains that the Administrative Complaint alleges violations of 40 C.F.R. § 370.30. RPHX at 2. This is incorrect. There is no reference to 40 C.F.R. § 370.30 in the Administrative Complaint.

Respondent argues that Section 325 of EPCRA, 42 U.S.C. § 11045, authorizes the assessment of penalties only for violations of Section 325 of EPCRA, 42 U.S.C. § 11045. In making this argument, Respondent appears to rely on the language of Section 325(c)(1) of

EPCRA, 42 U.S.C. § 11045(c)(1), specifically, the phrase, “of this title” as referring solely to Section 325 of EPCRA, 42 U.S.C. § 11045, and not the EPCRA statute as a whole. Black’s Law Dictionary dispels Respondent’s narrow interpretation:

Title. * * * in legislation, the title of a statute is the heading or preliminary part, furnishing the name by which the act is individually known.

Black’s Law Dictionary, Fifth Edition, at 1331. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes the Court to assess a penalty where, as here, Respondent has violated Section 313 of EPCRA, 42 U.S.C. § 11023.

Respectfully submitted,



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Dated: November 5, 2015

