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U.S. EPA REGION 5
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No.EPCRA-05-2024-0005**
)
FORGE GROUP DEKALB LLC)
D/B/A DEKALB FORGE COMPANY) **Proceeding to Assess a Civil Penalty**
DEKALB, ILLINOIS) **Under Section 325(c) of the Emergency**
) **Planning and Community Right-to-Know**
Respondent.) **Act of 1986, 42 U.S.C. § 11045(c)**
)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”), Region 5.
3. Respondent is Forge Group Dekalb LLC d/b/a Dekalb Forge Company, a limited liability company doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or the conclusions of law as set forth in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22, 372.23 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed or otherwise used a toxic chemical in an amount exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and in 40 C.F.R. § 372.25 during the calendar year, to complete and submit a toxic chemical release inventory form ("Form R") to the Administrator of EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA and 40 C.F.R. § 372.25, except as provided

in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and after 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$69,733 per day for each violation of Section 313 that occurred after November 2, 2015, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

13. Respondent is, and at all times relevant to this CAFO was, a limited liability company doing business in the State of Illinois.

14. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1832 Pleasant Street, Dekalb, Illinois ("facility").

16. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures and other

stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. The facility has a NAICS code of 33211, a covered NAICS code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22 and 372.23.

20. Respondent's facility receives, and at all times relevant to this CAFO, received metal pieces, bars and sheets, containing chromium, manganese, and nickel.

21. Chromium, manganese, and nickel are each a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.

22. Chromium, manganese, and nickel are each a toxic chemical as that term is defined in 42 U.S.C. § 11049(10) and 40 C.F.R. 372.3.

23. During the calendar years 2020, 2021, and 2022, Respondent processed metal pieces by the shaping of the metal through hammering, pressing, cutting, heating, or rolling into a desired shape.

24. At all times relevant to this CAFO, Respondent processed, as that term is defined at 40 C.F.R. 372.3, metal containing chromium, manganese, and nickel.

25. On June 22, 2022, a representative of EPA inspected Respondent's facility to assess Respondent's compliance with Section 313 of EPCRA.

26. On July 20, 2023, EPA issued Respondent a Notice of Opportunity to Confer and Intent to File an Administrative Complaint.

Counts 1 and 2

27. Complainant incorporates paragraphs 1 through 26 of the CAFO as if set forth in this paragraph.

28. During the calendar years 2020 and 2021, Respondent's facility processed, as the term is defined at 40 C.F.R. § 372.3, chromium, CAS No. 7440-47-3 listed under 40 C.F.R. § 372.65, in amounts greater than the 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

29. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for chromium for calendar year 2020 by July 1, 2021.

30. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for chromium for calendar year 2020 by July 1, 2021.

31. Respondent submitted Form R for chromium to the Administrator of EPA and to Illinois on March 22, 2023 for calendar year 2020.

32. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for chromium for calendar year 2021 by July 1, 2022.

33. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for chromium for calendar year 2021 by July 1, 2022.

34. Respondent submitted Form R for chromium to the Administrator of EPA and to Illinois on April 24, 2023 for calendar year 2021.

35. Respondent's failure to submit timely Form Rs for chromium to the Administrator of EPA and to Illinois for calendar years 2020 and 2021 constitutes two violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 3-5

36. Complainant incorporates paragraphs 1 through 26 of the CAFO as if set forth in this paragraph.

37. During the calendar years 2020, 2021, and 2022, Respondent's facility processed, as the term is defined at 40 C.F.R. § 372.3, manganese, CAS No.7439-96-5 listed under 40 C.F.R. § 372.65, in amounts greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

38. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for manganese for calendar year 2020 by July 1, 2021.

39. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for manganese or calendar year 2020 by July 1, 2021.

40. Respondent submitted a Form R for manganese to the Administrator of EPA and to Illinois on February 5, 2024 for calendar year 2020.

41. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for manganese for calendar year 2021 by July 1, 2022.

42. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for manganese for calendar year 2021 by July 1, 2022.

43. Respondent submitted a Form R for manganese to the Administrator of EPA and to Illinois on February 5, 2024 for calendar year 2021.

44. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for manganese for calendar year 2022 by July 1, 2023.

45. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for manganese for calendar year 2022 by July 1, 2023.

46. Respondent submitted a Form R for manganese to the Administrator of EPA and to Illinois on February 5, 2024 for calendar year 2022.

47. Respondent's failure to submit timely Form Rs for manganese to the Administrator of EPA and to Illinois for calendar years 2020, 2021, and 2022 constitutes three violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Counts 6 and 7

48. Complainant incorporates paragraphs 1 through 26 of the CAFO as if set forth in this paragraph.

49. During the calendar years 2020 and 2022, Respondent's facility processed, as the term is defined at 40 C.F.R. § 372.3, nickel, CAS No. 7440-02-0 listed under 40 C.F.R. § 372.65, in amounts greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

50. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for nickel for calendar year 2020 by July 1, 2021.

51. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for nickel for calendar year 2020 by July 1, 2021.

52. Respondent submitted a Form R for nickel to the Administrator of EPA and to Illinois on February 5, 2024 for calendar year 2020.

53. Respondent was required to submit to the Administrator of EPA and to Illinois a Form R for nickel for calendar year 2022 by July 1, 2023.

54. Respondent did not submit to the Administrator of EPA and to Illinois a Form R for nickel for calendar year 2022 by July 1, 2023.

55. Respondent submitted a Form R for nickel to the Administrator of EPA and to

Illinois on February 5, 2024 for calendar year 2022.

56. Respondent's failure to submit timely Form Rs for nickel to the Administrator of EPA and to Illinois for calendar years 2020 and 2022 constitutes two violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

57. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$120,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended) (April 12, 2001).

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$120,000 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

59. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Carol Staniec
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
staniec.carol@epa.gov
R5lecab@epa.gov

Elyse Voyen
Office of Regional Counsel
U.S. EPA, Region 5
voyen.elyse@epa.gov

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
R5hearingclerk@epa.gov

60. This civil penalty is not deductible for federal tax purposes.

61. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

62. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

63. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts

paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to Milton Wise at EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

General Provisions

64. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: voyen.elyse@epa.gov (for Complainant), and falbe@millercanfield.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

65. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal administrative civil penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), for the violations alleged in this CAFO.

66. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

67. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws.

68. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA.

69. The terms of this CAFO bind Respondent, its successors and assigns.

70. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

71. Each party agrees to bear its own costs and attorney's fees in this action.

72. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
FORGE GROUP DEKALB LLC D/B/A DEKALB FORGE COMPANY
Docket No.: EPCRA-05-2024-0005

Forge Group Dekalb LLC d/b/a Dekalb Forge Company, Respondent

3-11-2024
Date



Kent Paul
Chief Financial Officer
FORGE GROUP DEKALB LLC
d/b/a DEKALB FORGE COMPANY

**In the Matter of:
FORGE GROUP DEKALB LLC D/B/A DEKALB FORGE COMPANY
Docket No.: EPCRA-05-2024-0005**

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
FORGE GROUP DEKALB LLC D/B/A DEKALB FORGE COMPANY
Docket No.: EPCRA-05-2024-0005**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5