



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 03 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Burke Bovender  
Plant Manager  
The ESAB Group, Inc.  
256 Midway Drive  
Union, South Carolina 29379

Re: The ESAB Group, Inc.  
Consent Agreement and Final Order  
Docket No. EPCRA-04-2016-2008(b)

Dear Mr. Bovender:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts The ESAB Group, Inc., on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions concerning this matter or The ESAB Group, Inc.'s compliance status in the future, please contact Mr. Vinson Poole of the EPA staff at (404) 562-9186.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kimberly L. Bingham".

Kimberly L. Bingham  
Acting Chief  
Chemical Safety & Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

The ESAB Group, Inc. )

Respondent. )  
\_\_\_\_\_ )

Docket Number: EPCRA-04-2016-2008(b)

HEARING CLERK

2016 APR 23 AM 7:59

~~USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL  
P.B.~~

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is The ESAB Group, Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is The ESAB Group, Inc., a company doing business in the State of South Carolina.

5. Respondent is a "person" and is the owner and operator of a "facility" the terms are defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 322(4) EPCRA, 42 U.S.C. § 11049(4).

HEARING CLERK

2016 MAY - 3 AM 8:00

~~USEPA REGION 4  
OFFICE OF REGIONAL  
COUNSEL~~

6. Respondent's facility is located at 256 Midway Drive, Union, South Carolina 29379.

### **III. EPA's Allegations of Violations**

7. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System (NAICS) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of EPA and to the State in which the facility is located, by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during the preceding calendar year.

8. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

9. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

10. Respondent's facility is classified under SIC code 3357 and NAICS code 331491.

11. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

12. Copper and nickel are toxic chemicals listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65.

13. Respondent's facility processed copper and nickel in excess of the 25,000 pound threshold quantity for these chemicals established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, during calendar year 2013.

14. Respondent violated the reporting requirements of Section 313 of EPCRA at its facility by failing to submit the required Form R for copper and nickel for calendar year 2013, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

15. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than **\$37,500** for each violation of Section 313 that occurred after December 6, 2013. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

#### **IV. Consent Agreement**

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

17. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

20. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

#### **V. Final Order**

22. Respondent shall pay a civil penalty of **THIRTY-NINE THOUSAND, SIX HUNDRED TWENTY DOLLARS (\$39,620)**, for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

23. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
(513) 487-2091

The check shall reference on its face the name and the Docket Number of the CAFO.

24. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Vinson Poole  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
U.S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

25. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

**VI. Other Provisions**

26. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and

attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

27. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

28. This CAFO shall be binding upon the Respondent, its successors and assigns.

29. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9169

30. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

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**VII. Effective Date**

31. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

The ESAB Group, Inc.

By: [Signature] Date: 4/6/16  
Name: Stacie Bowender (Typed or Printed)  
Title: Plant Manager (Typed or Printed)

U.S. Environmental Protection Agency

By: [Signature] Date: 4/25/16  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 2<sup>nd</sup> day of May, 2016

[Signature]  
Tanya Floyd  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing  
Consent Agreement and Final Order, In the Matter of The ESAB Group, Inc., Docket Number:  
EPCRA-04-2016-2008(b), on the parties listed below in the manner indicated:

Robert W. Bookman (Via EPA's internal mail)  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street  
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)  
Senior Attorney  
U.S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, Georgia 30303

Burke Bovender (Via Certified Mail—Return Receipt Requested)  
Plant Manager  
The ESAB Group, Inc.  
256 Midway Drive  
Union, South Carolina 29379

Date: 5-3-16



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511