

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Laura J. Berry 11/10/11
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPORA-01-2011-0038 & CAA-01-2011-0039

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Consolidated Industries Acquisition Corp.
677 Mixville Road
Cheshire, CT 06410

Total Dollar Amount of Receivable \$ 105,240 Due Date: 12/8/11

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

Reply to: (617) 918-1148
Fax: (617) 918-0148
Mail Code: OES 04-2

November 8, 2011

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED
NOV 08 2011
EPA ORC
Office of Regional Hearing Clerk

Re: *In re Consolidated Industries Acquisition Corporation d/b/a Consolidated Industries, Inc., Docket Nos. EPCRA-01-2011-0038 and CAA-01-2011-0039*

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Thomas M. Armstrong, Esq. (Counsel for Respondent)
Chris Rascher, OES, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
BEFORE THE ADMINISTRATOR**

RECEIVED

NOV 08 2011

EPA ORC *WS*
Office of Regional Hearing Clerk

IN THE MATTER OF)

CONSOLIDATED INDUSTRIES)
ACQUISITION CORPORATION)
dba Consolidated Industries, Inc.)

677 Mixville Road)
Cheshire, CT 06410)

RESPONDENT.)
_____)

Docket Nos.:
EPCRA-01-2011-0038,
CAA-01-2011-0039

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having filed a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent, Consolidated Industries Acquisition Corporation dba Consolidated Industries, Inc. ("Respondent" or "Consolidated"), the Parties herein, on July 6, 2011;

Respondent having received extensions to file an Answer and Request for Hearing until November 7, 2011; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter,

NOW, THEREFORE, before the taking of any testimony, upon the pleading, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

STATUTORY AND REGULATORY AUTHORITY

1. This CAFO resolves an administrative action for the assessment of monetary penalties brought pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c), also known as the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”); Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permit, 40 C.F.R. Part 22.

2. EPA’s Complaint alleged that Consolidated failed to:

- a) timely provide toxic chemical release inventory reporting forms (“Form Rs”) to EPA and the State of Connecticut for the chemicals chromium and nickel, which were manufactured, processed or otherwise used at Consolidated’s facility located in Cheshire, Connecticut, in quantities equal to or greater than the threshold amounts established for these chemicals at 40 C.F.R. §372.25, in violation of Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and its implementing regulations at 40 C.F.R. Part 372; and
- b) submit a Risk Management Plan (“RMP”) for the storage and processing of hydrofluoric acid (70% concentration) at Consolidated’s facility in Cheshire, Connecticut, before storing it in amounts that exceeded the regulatory threshold established at 40 C.F.R. § 68.130, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68.

TERMS OF SETTLEMENT

3. The provisions of this CAFO shall apply to and be binding on the Parties, their officers, directors, agents, servants, employees, successors and assigns.

4. Respondent admits the jurisdictional allegations of the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue and consents to the terms of this CAFO.

5. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact alleged in the Complaint and waives its right to appeal the Final Order.

6. Respondent certifies that it is currently operating the Facility described in paragraph 19 of the Complaint in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations found at 40 C.F.R. Part 68.

7. Respondent neither admits nor denies the specific factual and legal allegations contained in the Complaint and neither entry of nor compliance with the Final Order shall be construed as an admission of a violation of environmental law.

8. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaint, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of \$105,240 for the violations alleged in this matter. The penalty shall be apportioned in the following manner: \$45,000 for the alleged EPCRA violations and \$60,240 for the alleged CAA violations.

9. Respondent consents to the issuance of this CAFO and consents to the payment of the penalty cited in the foregoing paragraph.

10. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

11. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall submit a cashier's or certified check in the amount of \$105,240 payable to the order of the "Treasurer, United States of America." The check should be forwarded to:

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

Or, Respondent may make payment by electronic funds transfer via:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

Respondent shall include the case name and docket numbers (*In re Consolidated Industries, Inc.*, Docket Nos. EPCRA-01-2011-0038, CAA-01-2011-0039) on the face of the check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and copies of the check or confirmation of electronic wire transfer to:

Wanda Santiago
Regional Hearing Clerk (Mail Code ORA18-1)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Laura J. Berry
Enforcement Counsel (Mail Code OES 04-2)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

12. If Respondent fails to make the payment required by paragraph 11 by the required due date, the total penalty amount of \$105,240, plus all accrued interest (less payments already made), shall become due immediately to the United States upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made by cashier's or certified check or by electronic payment as described in paragraph 11.

13. 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.

14. In the event that any portion of the civil penalty amount relating to the alleged EPCRA violations (which shall be deemed to be 43 percent of the total due under paragraph 8, above) is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the payment was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of

the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

15. In the event that any portion of the civil penalty amount relating to the alleged CAA violations (which shall be deemed to be 57 percent of the total due under paragraph 8, above) is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs as provided in 42 U.S.C. § 7413(d). In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

16. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

17. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA and Section 113(d) of the CAA for the violations alleged in the

Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in the Complaint or this CAFO.

18. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

19. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any other applicable provision of federal environmental law.

20. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal environmental law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal environmental permit.

21. The parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

22. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 11/07/11

FOR RESPONDENT CONSOLIDATED INDUSTRIES, INC.

John Wilbur
John Wilbur, President
Consolidated Industries, Inc.

Date: 11-04-2011

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will be effective on the date it is filed with the Regional Hearing Clerk.

Date: November 8, 2011 Jill T. Metcalf
Jill T. Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF)
)

CONSOLIDATED INDUSTRIES)
ACQUISITION CORPORATION)
d/b/a Consolidated Industries, Inc.)
)

677 Mixville Road)
Cheshire, CT 06410)
)

RESPONDENT.)
_____)

Docket Nos: EPCRA-01-2011-0038
CAA-01-2011-0039

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

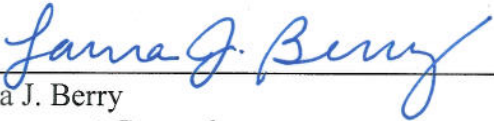
Original and one copy,
hand-delivered:

Ms. Wanda Rivera
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested:

Thomas M. Armstrong, Esq.
Reid & Reige, P.C.
One Financial Plaza
Hartford, CT 06103
(Counsel for Respondent)

Dated: November 8, 2011



Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel (617) 918-1148
Fax (617) 918-0148