UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 2 2 2017

REPLY TO THE ATTENTION OF:

Richard A. Legenza
General Counsel
Hitchcock Industries, Inc.,
d/b/a Consolidated Precision Products
8701 Harriet Avenue South
Bloomington, Minnesota 55420
rick.legenza@cppcorp.com

Re: Hitchcock Industries, Inc., d/b/a Consolidated Precision Products, Bloomington, Minnesota
Consent Agreement and Final Order
Docket Number **EPCRA-05-2017-0018**

Dear Mr. Legenza:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on May 22, 2017.

Please pay the EPCRA civil penalty in the amount of $45,000 in the manner prescribed in paragraphs 30 and 31, and reference your checks with the docket number: **EPCRA-05-2017-0018**.

Your payment is due on June 21, 2017.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by email at mcnamara.ruth@epa.gov if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Guenther, Associate Regional Counsel, at (312) 886-0566 or by email at guenther.robert@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

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REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	
	)	**Docket No. EPCRA-05-2017-0018**
HITCHCOCK INDUSTRIES, INC., d/b/a CONSOLIDATED PRECISION PRODUCTS, BLOOMINGTON, MINNESOTA,	)	**Proceeding to Assess a Civil Penalty Under Section 325(c)(1) of the Emergency Planning and Community Right-to-know Act**
Respondent.	)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under section 325(c)(1) of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), 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. Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Hitchcock Industries, Inc., an entity doing business in the State of Minnesota, as Consolidated Precision Products.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 the CAFO.

Jurisdiction and Waiver of the Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual or legal allegations 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.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. part 370). The form must contain the information required by section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. part 355, appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R.§ 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

12. Under section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term "hazardous chemical" has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R.§ 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to $25,000 for each EPCRA section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19 increased the statutory maximum penalty to $37,500 per day of violation for violations that occurred after January 12, 2009.

Allegations of Fact and Liability

15. Respondent is a "person" as that term is defined under section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 8701 Harriet Avenue South, Bloomington, Minnesota (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 under section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. During calendar year 2015, Respondent maintained at its facility the following substances in the quantities stated:

CHEMICAL	CAS #	2015 STORAGE
Hydrofluoric Acid	7664-39-3	2,500 lbs.
Sulfuric Acid	7664-93-9	5,000 lbs.
Chlorine	7782-50-5	900 lbs.
Sulfur Dioxide	89125-89-3	900 lbs.
Silica Sand	14940-68-2	350,000 lbs.
Propane	74-98-6	40,000 lbs.
Carbon Dioxide	124-38-9	30,000 lbs.
Aluminum Alloys	7429-90-5	25,000 lbs.
Magnesium Alloys	7439-95-4	18,000 lbs.

20. Hydrofluoric acid, sulfuric acid, chlorine and sulfur dioxide are "extremely hazardous substances" according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2). According to 40 C.F.R. part 355, appendices A and B, these substances have minimum threshold levels indicated in the chart below:

CHEMICAL	CAS #	MINIMUM THRESHOLD LEVEL (MTL)
Hydrofluoric Acid	7664-39-3	100 lbs.
Sulfuric Acid	7664-93-9	500 lbs.
Chlorine	7782-50-5	100 lbs.
Sulfur Dioxide	89125-89-3	500 lbs.

21. Silica sand, propane, carbon dioxide, aluminum alloys and magnesium alloys are classified as health hazards by their respective MSDSs and are "hazardous chemicals" according to section 311(e) of EPCRA, 42 U.S.C. § 11021(e). According to 40 C.F.R. § 370.10(a)(2)(i), each of these substances has a minimum threshold level of 10,000 pounds.

22. OSHA requires Respondent to prepare, or have available, an MSDS for each of the substances identified in the chart in paragraph 19.

23. At all times relevant to this CAFO, the Minnesota Division of Homeland Security and Emergency Management was the SERC for the State of Minnesota under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

24. At all times relevant to this CAFO, the Bloomington Fire Department was the fire department with jurisdiction over the facility.

25. During at least one period of time in calendar year 2015, the substances listed in the chart in paragraph 19 were present at the facility in amount equal to or greater than the minimum threshold levels stated.

26. Respondent was required to submit to the SERC and local fire department a completed emergency and hazardous chemical inventory form including the substances listed in paragraph 19 on or before March 1, 2016, for calendar year 2015.

27. Respondent submitted to the Minnesota SERC and Bloomington Fire Department completed Emergency and Hazardous Chemical Inventory Forms including the substances listed in paragraph 19 on September 29, 2016.

28. Each day Respondent failed to submit to the SERC and local fire department a completed Emergency and Hazardous Chemical Inventory Form including each of the substances listed in paragraph 19 by March 1, 2016, constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

29. Complainant has determined that an appropriate civil penalty to settle this action is $45,000 for the violations alleged in this CAFO. 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 U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

30. Within 30 days after the effective date of this CAFO, Respondent must pay a $45,000 civil penalty for the violations alleged in this CAFO. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the case caption and the docket numbers of this CAFO.

31. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

33. If Respondent does not timely pay the civil penalty, U.S. 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. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

35. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: guenther.robert@epa.gov (for Complainant), and rick.legenza@cppcorp.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

36. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

38. Respondent certifies that it is complying with section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

40. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

42. Each person signing this consent 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.

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

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

Hitchcock Industries, Inc., Bloomington, Minnesota Respondent, d/b/a Consolidated Precision Products

4/28/2017
Date

Richard A Legenza
Richard A. Legenza
General Counsel

U.S. Environmental Protection Agency, Complainant

5-16-17
Date

for
Jason H. El-Zein, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

5/16/2017
Date

Margaret Guerrero, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Hitchcock Industries, Inc., Bloomington, Minnesota, d/b/a Consolidated Precision Products
Docket No. EPCRA-05-2017-0018

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.

May 19, 2017
Date

Anne L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Hitchcock Industries, Inc., Bloomington, Minnesota, d/b/a Consolidated Precision Products
Docket No. EPCRA-05-2017-0018

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on May 22, 2017 in the following manner to the addressees:

Copy by E-mail to
Attorney for Respondent: Ken Podpeskar
kpodpeskar@envirolawgroup.com

Copy by E-mail to
Attorney for Complainant: Robert S. Guenther
guenther.robert@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: May 22, 2017 LaDawn Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5