UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET, SUITE 1100
BOSTON, MA 02114-2023

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

July 6, 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

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. Administrative Complaint and Notice of Opportunity for Hearing; and

2. Certificate of Service.

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

Very truly yours,

Laura J. Berry

Laura J. Berry
Enforcement Counsel

Enclosures

cc: John Wilbur, Consolidated Industries, Inc.
Chris Rascher, OES, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF CONSOLIDATED INDUSTRIES ACQUISITION CORPORATION dba Consolidated Industries, Inc. 677 Mixville Road Cheshire, CT 06410 Respondent Proceeding under Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c), And Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)	Docket Nos: EPCRA-01-2011-0038 CAA-01-2011-0039 **COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing 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"), and Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). This action is subject to 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 Permits, 40 C.F.R. Part 22. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 ("Complainant").

2. This Complaint alleges that Consolidated Industries Acquisition Corporation, d/b/a Consolidated Industries, Inc. ("Respondent") failed to submit timely, complete, and correct Toxic Chemical Release Inventory Reporting Forms, as required by Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations that set out in greater detail the Section 313 reporting requirement, 40 C.F.R. Part 372.

3. This Complaint also alleges that Respondent failed to submit a risk management plan ("RMP") for hydrofluoric acid (50% or greater) before using it in a process in an amount that exceeded the regulatory threshold, 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.

4. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

II. APPLICABLE STATUTES AND REGULATIONS

EPCRA Statutory and Regulatory Authority

5. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, the United States Environmental Protection Agency ("EPA") promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372.

6. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25. If the owner or operator determines that the alternative reporting threshold

specified in 40 C.F.R. § 372.27 applies, the owner or operator may submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (the alternative threshold certification statement is also known as "Form A"). Each Form R or Form A is required to be submitted to the Administrator of EPA and to the state in which the subject facility is located.

7. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification ("SIC") code or North American Industry Classification System ("NAICS") code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity exceeding the established threshold during a calendar year are required to submit a Form R or Form A for each of these substances for that year.

8. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection and Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provides that any person who violates any requirement of Section 313 after March 15, 2004 and on or before January 12, 2009 shall be liable to the United States for a civil penalty not to exceed $32,500 per day for each such violation, and any person who violates any requirement of Section 313 after January 12, 2009 shall be liable to the United States for a civil penalty not to exceed $37,500 per day for each such violation.

CAA Statutory and Regulatory Authority

9. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of the accidental release of

certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released, and Section 112(r)(5), 42 U.S.C § 7412(r)(5), requires EPA to establish for each regulated substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a risk management plan ("RMP").

10. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated RMP regulations, found at 40 C.F.R. Part 68 ("Part 68"). Section 68.130 of 40 C.F.R. lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities.

11. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

12. A "process" is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

13. Each process in which a regulated substance is present in more than a threshold quantity (a "covered process") is subject to one of three risk management programs, whose eligibility requirements are set forth in 40 C.F.R. § 68.10. Program 1 is the least comprehensive, and Program 3 is the most comprehensive.

14. Under 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain specified NAICS codes or subject to the OSHA process safety management standard set forth at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

15. Under Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

16. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to $32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to $37,500 per day for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

18. Respondent is a corporation organized under the laws of the State of Wyoming with a usual place of business at 677 Mixville Road, Cheshire, CT 06410.

19. Respondent operates a facility located at 677 Mixville Road, Cheshire, CT ("facility") where it forges both ferrous and non-ferrous metal parts for the aerospace industry.

20. As a corporation, Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. Respondent is an owner or operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

22. The facility has 10 or more "full-time employees," as that term is defined by 40 C.F.R. § 372.3.

23. The facility is classified in a SIC code or NAICS code set forth in 40 C.F.R. § 372.23.

24. During the calendar years 2007 and 2008, Respondent processed chromium and nickel, toxic chemicals listed under 40 C.F.R. § 372.65, in quantities exceeding the established threshold of 25,000 pounds set forth at 40 C.F.R. §372.25.

25. The requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, therefore apply to Respondent's facility.

26. At the facility, Respondent manufactures, processes, handles and/or stores hydrofluoric acid (50% concentration or greater).

27. The chemical hydrofluoric acid (50% concentration or greater) is a regulated toxic substance listed under 40 C.F.R. § 68.130.

28. The facility is a building or structure from which an accidental release may occur and is therefore a "stationary source," as that term is defined Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

29. Respondent is the "owner or operator," as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

30. On April 19, 2010, duly authorized representatives of EPA conducted a compliance evaluation inspection of the facility (the "EPA inspection") to determine its compliance with EPCRA.

31. On June 16, 2010, EPA sent Respondent a request for information ("Information Request") pursuant to Section 114 of the CAA, 42 U.S.C. § 7414.

32. On August 31, 2010, Respondent submitted to EPA a response ("August 31 Letter") to the Information Request.

33. Under 40 C.F.R. § 68.130, the threshold quantity for accidental release prevention for hydrofluoric acid (50% concentration or greater) is 1,000 pounds. Approximately 2.55 55-gallon drums or at least 1,426 pounds of 70% hydrofluoric acid must be present to reach the threshold.

34. According to information gathered in the course of EPA's inspection and the August 31 Letter, Respondent processed and stored more than the threshold amount of the regulated substance hydrofluoric acid (70% concentration or greater) at various times in 2006 through 2010.

35. As the owner or operator of a stationary source that has more than the threshold amount of a regulated substance in a covered process, Respondent is subject to the RMP provisions of Part 68.

36. At the time of the EPA Inspection, EPA representatives observed that residential houses were located within 250 feet of the covered process at the facility.

37. As a follow up to the EPA inspection, EPA conducted an "Offsite Consequences Analysis" ("OCA") for one 55-gallon drum of hydrofluoric acid (70% concentration) (559 pounds of the chemical) stored and processed at the facility.

38. The OCA for the hydrofluoric acid shows that the distance to a toxic endpoint for a worst case release of hydrofluoric acid from the facility is 0.2 miles for a rural environment, which is greater than the distance from the facility's covered process to a public receptor (250 feet).

39. The facility's storage and processing of hydrofluoric acid (70% concentration) is subject to the requirements of Program 2, in accordance with the requirements of 40 C.F.R. § 68.10(a) through (d), because the distance to a toxic endpoint for a worst case release of hydrofluoric acid is greater than the distance to a public receptor, but the process does not meet the eligibility requirements for Program 3.

40. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA obtained from the Department of Justice a waiver of the twelve-month limitation on EPA's authority to initiate administrative cases.

IV. VIOLATIONS

EPCRA 313 VIOLATIONS: FAILURE TO SUBMIT FORM R

Count I

41. The foregoing paragraphs 1 through 40 are incorporated by reference as if fully set forth herein.

42. During the calendar year 2007, Respondent manufactured, processed or otherwise used chromium, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the

established threshold. Respondent was therefore required to submit to the Administrator of EPA a Form R or Form A for this chemical on or before July 1, 2008.

43. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2008.

44. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

COUNT II

45. The foregoing paragraphs 1 through 44 are incorporated by reference as if fully set forth herein.

46. During the calendar year 2007, Respondent manufactured, processed or otherwise used nickel, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a Form R or Form A for this chemical on or before July 1, 2008.

47. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2008.

48. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

COUNT III

49. The foregoing paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

50. During the calendar year 2008, Respondent manufactured, processed or otherwise used chromium, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the

established threshold. Respondent was therefore required to submit to the Administrator of EPA a Form R or Form A for this chemical on or before July 1, 2009.

51. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2009.

52. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

COUNT IV

53. The foregoing paragraphs 1 through 52 are incorporated by reference as if fully set forth herein.

54. During the calendar year 2008, Respondent manufactured, processed or otherwise used nickel, a chemical listed under 40 C.F.R. § 372.65, in a quantity exceeding the established threshold. Respondent was therefore required to submit to the Administrator of EPA a Form R or Form A for this chemical on or before July 1, 2009.

55. Respondent failed to submit this form to the Administrator of EPA on or before July 1, 2009.

56. Respondent's failure to submit this form was in violation of Section 313 of EPCRA and 40 C.F.R. Part 372.

CAA VIOLATION: Failure to Submit an RMP

COUNT V

57. Complainant realleges and incorporates by reference paragraphs 1 through 56 of this Complaint.

58. During 2006 through 2010, Respondent intermittently stored or processed hydrofluoric acid in a concentration of 50% or greater, a regulated substance, at the facility in quantities exceeding the 1,000 lb. threshold set forth in 40 C.F.R. § 68.130.

59. Such storage and processing of hydrofluoric acid are each a "covered process," as that term is defined in 40 C.F.R. § 68.3.

60. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, Respondent was required to implement a Level 2 Risk Management Program for the processing and storage of hydrofluoric acid (50% or greater) in quantities over the 1,000 lb. threshold.

61. Under 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, Respondent was required to prepare and submit a RMP for hydrofluoric acid (70% concentration) documenting such compliance before it began storing hydrofluoric acid (70% concentration) at the facility.

62. By failing to submit the RMP for hydrofluoric acid before processing and storing it at the facility in amounts that exceeded the regulatory threshold, from at least August 4, 2006 to approximately April 19, 2010, Respondent violated Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), and 40 C.F.R. §§ 68.10(a), 68.12 and 68.150.

63. Respondent is therefore subject to an assessment of penalties under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. Part 19.

V. PROPOSED CIVIL PENALTY

EPCRA PENALTY

64. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to $25,000 per day of violation for violations of 313(a) of EPCRA, 42 U.S.C. § 11023(a). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between March 15, 2004, and January 12, 2009 are subject to a penalty of up to

$32,500 per day, and violations that occur after January 12, 2009 are subject to a penalties of up to $37,500 per day of violation.

65. Failure to report in a timely manner, as required by Section 313, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, compromise the validity of health studies based on consequently inaccurate data bases, and prevent comprehensive planning by federal, state and local authorities to clean up industrial pollution.

66. The proposed civil penalty for the violations of Section 313 of EPCRA has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). For purposes of determining the amount of any penalty to be assessed, EPA considered the nature, circumstances, extent and gravity of the violations, and, with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [as amended through April 12, 2001]" ("ERP"), a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

67. The ERP states that a gravity-based penalty should be determined by considering the "circumstance level" and the "extent level" of a violation. The circumstance level of a violation takes into account the seriousness of the violation as it relates to the accuracy and

availability of the information to the community, states, and federal government. The extent level of a violation is based upon the quantity of each EPCRA Section 313 chemical manufactured, processed, or otherwise used by the facility, and the size of the facility, which is based upon the number of employees and the gross sales of the violating facility. The ERP also allows other adjustments to the penalty if a violation is voluntarily disclosed, the facility has a prior violation, or the subject chemical has been delisted.

68. The first stage in calculating the penalty pursuant to the ERP requires the determination of the circumstance level of the violation. Respondent failed to submit, within one year of the July 1 due date, a Form R or Form A for calendar year 2007 for chromium and nickel, chemicals listed under 40 CFR § 372.65 that it manufactured, processed or otherwise used in quantities exceeding the established threshold. Thus, the applicable circumstance level for Counts I and II of this Complaint is "Level 1." For calendar year 2008, Respondent filed the Form Rs for chromium and nickel less than one year late, or 363 days after the July 1 due date. The proposed penalty for Counts III and IV was therefore calculated in accordance with the Level 4 per-day formula for failure to report in a timely manner set forth in the ERP.

69. The second stage in calculating the proposed penalty requires the determination of the extent level. Respondent manufactured, processed or otherwise used less than ten times the threshold of Section 313 chemicals. In addition, Respondent has more than ten million dollars in total corporate sales and more than fifty employees at the violating facility. Based upon the amount of the Section 313 chemical used and the size and sales of the company entity, the applicable extent level for Counts I, II, III and IV of this Complaint is "Level B."

70. In addition to the determination of the applicable circumstance and extent levels for each count in this Complaint, Complainant considered other factors which may be used to

adjust the penalty amount. In particular, after considering Respondent's failure to voluntarily disclose the violations, its lack of a history of prior violations, and the subject chemicals not having been delisted, Complainant proposes no further adjustments to the gravity-based penalty amount. Note, however, that the proposed penalty is based upon the best information available to EPA at this time, and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

71. Based upon the foregoing factors, Complainant proposes that Respondent be assessed a civil penalty in the amount of ninety-one thousand seven hundred dollars ($91,700)[1] for the EPCRA violations alleged in this Complaint. For each violation, the proposed penalty is as follows:

Count I: $21,922

Count II: $21,922

Count III:. $23,952

Count IV:. $23,952

CAA PENALTY

72. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended, authorize EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred between March 15, 2004 and January 12, 2009 are subject to a penalty of up to $32,500 per day; and violations that occur after January 12, 2009 are subject to penalties of up to $37,500 per day of violation.

[1] The EPCRA 313 ERP, as amended, requires that the total applicable gravity-based penalty for all EPCRA 313 counts be rounded to the nearest unit of $100.

73. Based on the foregoing allegations and pursuant to the authority of Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Complainant proposes to assess against Respondent a civil penalty of eighty-four thousand and thirty-nine dollars ($84,039). In accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and EPA's August 15, 2001 Combined Enforcement Policy for Section 112(r) of the Clean Air Act, a copy of which is enclosed, Complainant considered the following in determining the amount of the proposed civil penalty: the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

74. The amount of the civil penalty proposed in paragraph 73 was calculated as follows:

a. Seriousness of the violation: The extent of deviation of Respondent's failure to develop a RMP that documents a Level 2 chemical release prevention program is considered major, resulting in a proposed penalty of $25,001. The potential environmental consequences of having hydrofluoric acid (70% concentration), a very dangerous chemical, periodically exceeding the threshold was considered to have a moderate impact, resulting in a 12.5% increase in the extent factor, to $28,126.

b. Duration of violation: The violations started no later than August 4, 2006 and stopped on approximately April 19, 2010, when the company switched to 49% concentration hydrofluoric acid. As explained in the chart below, due to a long period of time in 2007 and 2008 in which there was only one provable date of violation, EPA has chosen to limit the number of months of violation to ten, yielding a penalty of $5,000

Provable Dates of Violation	Months of Violations
8/4/2006 - 9/15/2006	2 months
2007	N/A (No provable violations)
11/31/2008	1 month
Regular violations between 7/10/2009 and 12/22/2009	6 months
4/19/2010	1 month
Total:	**10 months**

c. Size of violator: According to Dun & Bradstreet, Respondent's total annual sales in 2009 were approximately $11 million, resulting in a penalty adjustment of $20,000.

d. The 2008 Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340-46 (Dec. 11, 2008) amends 40 C.F.R. Part 19 to adjust statutory civil penalties to account for inflation. Pursuant to that rule, the seriousness of violation, duration of violation, and size of violator components of the penalty, which together comprise the gravity-based portion of the penalty, must be adjusted to account for inflation, resulting in a total gravity-based portion of the penalty of sixty-six thousand five hundred and sixty-four dollars ($66,564).

e. Economic Benefit of Noncompliance: The avoided cost benefit associated with Respondent's failure to develop and implement an RMP program is $17,475.

75. This violation is significant because an RMP plan helps facility personnel and emergency responders to assess and manage the hazards that are posed by chemicals at a facility so that the threat and impacts of releases are minimized. Hydrofluoric acid is an extremely toxic chemical, and the facility is located within 250 feet of residential houses.

76. The proposed penalties are based on the best information available to EPA at this time and may be adjusted if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the amount of the proposed penalty.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

77. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

78. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

79. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

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

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Laura J. Berry, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

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

80. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. INFORMAL SETTLEMENT CONFERENCE

81. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

82. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Laura J. Berry, Enforcement Counsel, at (617) 918-1148.

VIII. CONTINUED COMPLIANCE OBLIGATION

83. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and Section 112(r)(7) of the CAA, 42 U.S.C. §7412(r)(7), and implementing regulations at 40 C.F.R. Parts 372 and 68.

Susan Studlien

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

07/06/11
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF	Docket Nos: EPCRA-01-2011-0038
CONSOLIDATED INDUSTRIES ACQUISITION CORPORATION d/b/a Consolidated Industries, Inc.	CAA-01-2011-0039
RESPONDENT	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing 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, with copy of 40 C.F.R. Part 22:

John Wilbur, President
Consolidated Industries, Inc.
677 Mixville Road
Cheshire, CT 06410

Dated: July 6, 2011

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
Tel (617) 918-1148
Fax (617) 918-0148

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF	Docket Nos: EPCRA-01-2011-0038
CONSOLIDATED INDUSTRIES ACQUISITION CORPORATION d/b/a Consolidated Industries, Inc.	CAA-01-2011-0039
RESPONDENT	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing 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, with copy of 40 C.F.R. Part 22:

John Wilbur, President
Consolidated Industries, Inc.
677 Mixville Road
Cheshire, CT 06410

Dated: July 6, 2011

Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
Tel (617) 918-1148
Fax (617) 918-0148