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7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of:

Docket No. EPCRA-09-2011-0001e

11  
12 Axsys Technologies, Inc.,

CONSENT AGREEMENT  
AND FINAL ORDER  
pursuant to 40 C.F.R. §§ 22.13(b),  
22.18(b)(2), and 22.18(b)(3)

13 Respondent.  
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Axsys  
17 Technologies, Inc. (the "Respondent") agree to settle this matter and consent to the entry of this  
18 Consent Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

20 1. This is a civil administrative action brought under Section 325(c) of the Emergency  
21 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for  
22 assessment of a civil administrative penalty against Respondent for its failure to submit timely,  
23 complete, and accurate Toxic Chemical Release Inventory Forms for calendar years 2005, 2006,  
24 2007, and 2008 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing  
25 regulations set forth at 40 C.F.R. Part 372.

26 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,  
27 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May  
28 11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number  
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to  
3 Complainant.

4 **B. STATUTORY AND REGULATORY BASIS**

5 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA  
6 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for  
7 the submission of information relating to the release of toxic chemicals under EPCRA Section  
8 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.  
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and  
11 the State in which the facility is located a chemical release form published under Section 313(g)  
12 of EPCRA for each toxic chemical or toxic chemical category listed under Section 313(c) of  
13 EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed or otherwise used if: (i) the  
14 facility has ten or more full-time employees; (ii) the facility is in North American Industry  
15 Classification System Code 335999; and (iii) the facility manufactured, processed or otherwise  
16 used during the calendar year the listed toxic chemical or toxic chemical category of special  
17 concern in excess of the threshold quantity established under Section 313(f) of EPCRA and 40  
18 C.F.R. § 372.28.

19 5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a  
20 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for  
21 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of  
22 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for  
23 activities involving a toxic chemical or toxic chemical category that occurred during a calendar  
24 year must be submitted on or before July 1 of the next year.

25 **C. ALLEGED VIOLATIONS**

26 6. Respondent is a corporation and therefore fits within the definition of a "person," as  
27 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).  
28

1           7. At all times relevant to this matter, Respondent owned and operated a facility (the  
2 “Facility”) in the business of manufacturing and assembling hybrid microelectronic circuits,  
3 located at 7603 St. Andrews Avenue in San Diego, California, that fits within the definition of a  
4 “facility,” as provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

5           8. At all times relevant to this matter, the Facility had 10 or more “full-time employees,”  
6 as that term is defined at 40 C.F.R. § 372.3.

7           9. At all times relevant to this matter, the Facility was in North American Industry  
8 Classification System Code 335999, which is equivalent to Standard Industrial Classification  
9 Code 3629.

10           10. During the calendar year 2005, Respondent “processed,” as that term is defined in 40  
11 C.F.R. § 372.3, approximately 600 pounds of lead, a toxic chemical listed under 40 C.F.R.  
12 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that  
13 toxic chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C.  
14 § 11023(f), and 40 C.F.R. § 372.28.

15           11. During the calendar year 2006, Respondent “processed,” as that term is defined in 40  
16 C.F.R. § 372.3, approximately 600 pounds of lead, a toxic chemical listed under 40 C.F.R.  
17 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that  
18 toxic chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C.  
19 § 11023(f), and 40 C.F.R. § 372.28.

20           12. During the calendar year 2007, Respondent “processed,” as that term is defined in 40  
21 C.F.R. § 372.3, approximately 600 pounds of lead, a toxic chemical listed under 40 C.F.R.  
22 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that  
23 toxic chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C.  
24 § 11023(f), and 40 C.F.R. § 372.28.

25           13. During the calendar year 2008, Respondent “processed,” as that term is defined in 40  
26 C.F.R. § 372.3, approximately 600 pounds of lead, a toxic chemical listed under 40 C.F.R.  
27 § 372.65. This quantity exceeded the 100 pound threshold for reporting “processing” of that  
28 toxic chemical of special concern established under Section 313(f) of EPCRA, 42 U.S.C.

1 § 11023(f), and 40 C.F.R. § 372.28.

2 14. Respondent was required to submit a Form R for lead to EPA and the State of  
3 California for calendar year 2005 on or before July 1, 2006.

4 15. Respondent was required to submit a Form R for lead to EPA and the State of  
5 California for calendar year 2006 on or before July 1, 2007.

6 16. Respondent was required to submit a Form R for lead to EPA and the State of  
7 California for calendar year 2007 on or before July 1, 2008.

8 17. Respondent was required to submit a Form R for lead to EPA and the State of  
9 California for calendar year 2008 on or before July 1, 2009.

10 18. Respondent failed to timely submit the Form Rs required of it to EPA and the State  
11 of California for calendar years 2005, 2006, 2007, and 2008 and thus violated Section 313 of  
12 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

13 19. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty  
14 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any  
15 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount  
16 not to exceed \$32,500 for each such violation that occurred after March 15, 2004 but on or before  
17 January 12, 2009 or \$37,500 for each such violation that occurred after January 12, 2009. Under  
18 the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, and the  
19 Civil Monetary Penalty Inflation Adjustment Rule, the violations cited above would merit a  
20 gravity-based civil penalty of EIGHTY-NINE THOUSAND, SEVEN HUNDRED DOLLARS  
21 (\$89,700) given the nature, circumstances, and extent of the violations alleged.

22 **D. RESPONDENT'S ADMISSIONS**

23 20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
24 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
25 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;  
26 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil  
27 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the  
28 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order

1 contained in this CAFO.

2 **E. AUDIT POLICY**

3 21. EPA's final policy statement on *Incentives for Self-Policing: Discovery, Disclosure,*  
4 *Correction and Prevention of Violations*, 65 Federal Register 19618 (April 11, 2000) (the "Audit  
5 Policy") has several important goals, including encouraging greater compliance with the laws and  
6 regulations which protect human health and the environment and reducing transaction costs  
7 associated with violations of the laws EPA is charged with administering. If certain specified  
8 criteria are met, reductions in gravity-based penalties of up to 100% are available under the Audit  
9 Policy. These criteria are: (1) systematic discovery of the violation(s) through an environmental  
10 audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4)  
11 discovery and disclosure independent of government or third party plaintiff; (5) correction and  
12 remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and  
13 (9) cooperation.

14 22. Complainant has determined that Respondent has satisfied all of the criteria under the  
15 Audit Policy and thus qualifies for the elimination of civil penalties in this matter. Accordingly,  
16 the civil penalty assessed in this matter is ZERO DOLLARS (\$0).

17 23. Complainant's finding that Respondent has satisfied the criteria of the Audit Policy is  
18 based upon documentation that Respondent has provided to establish that it satisfies these  
19 criteria. Complainant and Respondent agree that, should any material fact upon which  
20 Complainant relied in making its finding subsequently prove to be other than as represented by  
21 Respondent, this CAFO may be voided in whole or in part.

22 **F. CERTIFICATION OF COMPLIANCE**

23 24. In executing this CAFO, Respondent certifies that (1) it has now fully completed and  
24 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance  
25 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;  
26 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

27 25. The parties agree that (1) the phrase "required Toxic Chemical Release Inventory  
28 Forms" in Paragraph 24 refers exclusively to the Form Rs described in Paragraphs 14-17 of this

1 CAFO for calendar years 2005, 2006, 2007, and 2008; and (2) the certification in Paragraph 24  
2 applies exclusively to the period after September 2, 2009.

3 G. RETENTION OF RIGHTS

4 26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
5 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
6 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
7 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
8 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
9 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
10 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
11 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

12 27. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
13 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
14 and permits.

15 H. ATTORNEYS' FEES AND COSTS

16 28. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
17 this proceeding.

18 I. EFFECTIVE DATE

19 29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be  
20 effective on the date that the Final Order contained in this CAFO, having been approved and  
21 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

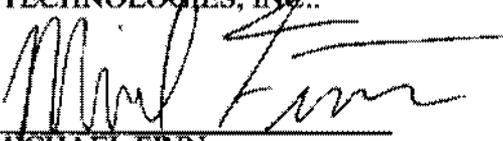
22 J. BINDING EFFECT

23 30. The undersigned representative of Complainant and the undersigned representative of  
24 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
25 of this CAFO and to bind the party he or she represents to this CAFO.

26 31. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
27 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
28 and assigns.

1 FOR RESPONDENT AXSYS TECHNOLOGIES, INC.:

2  
3 5/4/11  
DATE

  
MICHAEL FINN  
Vice President and Assistant Secretary  
Axsys Technologies, Inc.  
24 Simon Street  
Nashua, NH 03060

7 FOR COMPLAINANT EPA:

8  
9 6/09/11  
DATE

  
ENRIQUE MANZANILLA  
Director, Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Axsys Technologies, Inc. having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2011- ~~0000~~) be

4 entered, and Respondent shall comply with the terms and conditions set forth in the Consent

5 Agreement.

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8 06/15/11  
9 DATE

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STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

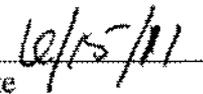
CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-09-2011- ) against Axsys Technologies, Inc., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Michael Finn  
Vice President and Assistant Secretary  
Axsys Technologies, Inc.  
24 Simon Street  
Nashua, NH 03060

Certified Mail No. 7003 3110 0006 2000 0155

  
Bryan Godwin  
Regional Hearing Clerk  
U.S. Environmental Protection Agency,  
Region IX

  
Date