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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)	Docket No. CAA-09-2024-0002
)	
FormFactor Inc.)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
)	
Livermore, California)	
)	
Respondent.)	
_____)	

I. CONSENT AGREEMENT

A. Preliminary Statement

1. This is a civil administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(d), and sections 22.13 and 22.18 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. In accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order ("CAFO") simultaneously initiates and concludes this matter.

2. Complainant is the Director the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency Region IX (the "EPA"), who has been delegated the authority to initiate and settle civil administrative penalty proceedings under section 113(d) of the CAA, 42 U.S.C. § 7413(d). EPA Delegation 7-6-A (August 4, 1994); EPA Region 9 Redelegation R9-7-6-A (February 11, 2013); Memorandum from John W. Busterud, Regional Administrator, Region 9, to all Region 9 supervisors and employees re: EPA R9 Organizational Realignment General Redelegation of Authority (May 5, 2020).

3. Pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the EPA and the United States Department of Justice jointly determined that this matter, which involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

4. Respondent is FormFactor Inc. ("FormFactor"), which owns and operates a nickel-plating facility located at 7005 Southfront Road, Livermore, California.

5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. Governing Law

6. Section 113(d)(1) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule,

order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to 40 C.F.R. Part 63, Subpart WWWW, § 63.11504 et seq., the National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”) for Areas Sources: Plating and Polishing operations, otherwise known as “Subpart 6W.”

7. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

8. Section 113(d)(2)(A) of the CAA provides that any administrative penalty assessed under Section 113(d)(1) of the CAA shall be assessed only after notice and an opportunity for a hearing, and that the EPA Administrator shall promulgate rules for such hearings. The Consolidated Rules of Practice contain those rules and apply to this Complaint.

9. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants ("HAPs"), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

10. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emissions Standards for Hazardous Air Pollutants, or NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 CFR Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 CFR Part 63. Part 63 NESHAPs are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs

EPA to promulgate emissions standards based on the maximum achievable control technology ("MACT").

11. Section 112(a) of the Act contains definitions relevant to Section 112. More specifically:
 - a. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
 - b. Section 112(a)(2) of the Act defines "area source" as any stationary source of hazardous air pollutants that is not a major source.
 - c. Section 112(a)(3) of the Act defines "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant.
 - d. Section 112(a)(9) defines "owner or operator" as any person who owns, leases, operates, controls or supervises a stationary source.
12. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.
13. Under the authority of Section 112(d) of the Act, EPA promulgated Subpart 6W. See 73 Fed. Reg. 37741 (July 1, 2008); as amended 76 Fed. Reg. 57919 (Sept. 19, 2011); and 85 Fed. Reg. 73921 (Nov. 19, 2020).
14. Pursuant to 40 C.F.R. § 63.11504(a), owners and operators of a plating or polishing facility that is an area source of HAPs emissions are subject to Subpart 6W if they meet the following conditions:
 - (1) The facility is engaged in one or more of the processes listed in 40 C.F.R. § 63.11504(a)(1)(i) through (vi), which includes non-chromium electroplating, electroforming, and electropolishing.
 - (2) The facility does not have the potential to emit any single HAP at a rate of 9.07 megagrams per year (Mg/yr) (10 tpy) or more and any combination of HAP at a rate of 22.68 Mg/yr (25 tpy) or more.
 - (3) The facility uses or has emissions of compounds of one or more plating and polishing metal HAPs, which means any compound of any of the following metals: cadmium, chromium, lead, manganese, and nickel, as defined in 40 C.F.R. § 63.11511, except for lead. Plating and polishing metal HAPs also include any of these metals in the elemental form.

15. Pursuant to 40 C.F.R. § 63.11506(a), owners and operators of an existing affected source must achieve compliance with the applicable provisions of Subpart 6W no later than July 1, 2010.
16. Pursuant to 40 C.F.R. § 63.11507(a), owners and operators of an affected new or existing non-cyanide electroplating, electroforming, or electropolishing tank that contains one or more of the plating and polishing metal HAPs and operates at a pH of less than 12, must comply with the requirements in 40 C.F.R. § 63.11507(a)(1), (2), or (3) and implement the applicable management practices in 40 C.F.R. § 63.11507(g), as practicable.
17. Pursuant to 40 C.F.R. § 63.11508(d), owners and operators of a plating and polishing facility that is an area source of HAP emissions must demonstrate continuous compliance with the applicable management practices and equipment standards whether the source uses a wetting agent/fume suppressant in the bath of the affected tank, an emission control device, or a tank cover to control emissions.
18. Pursuant to 40 C.F.R. § 63.11509(a), owners and operators of an affected source, as defined in 40 C.F.R. § 63.11505(a), must submit an Initial Notification. The Initial Notification must include the information specified in 40 C.F.R. §§ 63.9(b)(2)(i) through (iv) of the General Provisions of Part 63 and a description of the compliance method (e.g., use of wetting agent/fume suppressant) for each affected source. If the startup of the affected source was on or before July 1, 2008, the Initial Notification must be submitted no later than 120 calendar days after July 1, 2008, or no later than 120 days after the source becomes subject to this subpart, whichever is later. If the startup of the new affected source was after July 1, 2008, the Initial Notification must be submitted when the owner/operator becomes subject to this subpart.

19. Pursuant to 40 C.F.R. § 63.11509(b), owners and operators of a plating or polishing facility must submit a Notice of Compliance Status by July 1, 2010. A Notice of Compliance must include a list of affected sources and the plating and polishing metal HAP used in, or emitted by, those sources, methods used to comply with the applicable management practices and equipment standards, a description of the capture and emission control systems used to comply with the applicable equipment standards, and a statement by the owner or operator of the affected source as to whether the source is in compliance with the applicable standards or other requirements. If a facility makes a change to any items in 40 C.F.R. §§ 63.11509(b)(2)(i), iii, and (iv) that does not result in a deviation, an amended Notification of Compliance Status should be submitted within 30 days of the change.

20. Pursuant to 40 C.F.R. § 63.11509(c), owners and operators of a plating or polishing facility must prepare an annual certification of compliance report according to (c)(1) through (7) of 40 C.F.R. § 63.11509. The report does not need to be submitted unless a deviation from the requirements of Subpart 6W has occurred during the reporting year, in which case, the annual compliance report must be submitted along with the deviation report.

21. Pursuant to 40 C.F.R. § 63.11509(c)(7), each annual certification of compliance report must be submitted no later than January 31 of the year immediately following the reporting period and kept in a readily-accessible location for inspector review.

22. Pursuant to 40 C.F.R. § 63.11509(e), owners and operators must keep the records specified in paragraphs (e)(1) through (3) of this section. The records include: (1) a copy of any Initial Notification and Notification of Compliance Status that was submitted and all documentation supporting those

notifications; (2) the records specified in 40 C.F.R. §§ 63.10(b)(2)(i) through (iii) and (xiv) of the General Provisions of 40 C.F.R. Part 63, (3) the records required to show continuous compliance with each management practice and equipment standard that is applicable, as specified in 40 C.F.R. § 63.11508(d).

C. Alleged Violations of Law

23. Respondent is the owner and operator of a nickel-plating facility located at 7005 Southfront Road, Livermore, California.

24. FormFactor is a “person” within the meaning of the Act. 42 U.S.C. § 7602(e).

25. On April 2, 2021, under the authority of Section 114 of the Act, the EPA issued an information request letter to FormFactor. FormFactor provided a response to the Section 114 information request (“Information Response”) on April 30, 2021. The Information Response included a revised Initial Notification also dated April 30, 2021.

26. In the Information Response, FormFactor states that the Facility emits a combination of HAPs at a rate of approximately 9 tpy.

27. FormFactor is subject to Subpart 6W for FormFactor’s Facility.

28. The Information Response states that the Initial Notification, required by 40 C.F.R. § 63.11509(a), was first submitted to EPA on December 11, 2020.

29. The Information Response indicates that FormFactor had not submitted any Notifications of Compliance Status, required by 40 C.F.R. § 63.11509(b).

30. The Information Response indicates that FormFactor had not prepared any Annual Compliance Certification reports since January 1, 2016.

31. On June 9, 2021, the EPA conducted an inspection of the Facility.

32. During the inspection, FormFactor was not able to produce any records related to Subpart 6W and did not have any Annual Compliance Certification reports or compliance reports for Respondent's nickel-plating operation on-site.
33. During the inspection, FormFactor clarified the discrepancies in the Initial Notification and the Information Response to state that FormFactor operates fifteen (15) nickel-plating tanks. FormFactor stated that eleven (11) of those tanks use a wetting agent or fume suppressant for emission control and four (4) of the tanks use removable tank covers.
34. On June 23, 2021, FormFactor submitted information requested by EPA during the inspection. The information includes photographs of the wetting agent that FormFactor claimed was actually used in the operations.
35. On August 20, 2021, the EPA received a Corrective Action Plan for Subpart 6W from FormFactor. The Corrective Action Plan states that FormFactor will use tank covers and a wetting agent or fume suppressant on all "nickel containing tanks with the exception of two nickel strike tanks." The Corrective Action Plan did not address the total number of tanks that are in operation or measures that would be used on the nickel strike plating tanks.
36. On January 31, 2022, the EPA received a Subpart 6W Annual Compliance Certification from FormFactor. The Annual Compliance Certification reports a new tank, Tank ID APS3T6, that was started up approximately March 2021. FormFactor submitted an amended Notice of Compliance dated February 18, 2022.
37. The Annual Compliance Certification states that FormFactor did not submit an Annual Compliance Certification for the calendar year 2020.

38. The Annual Compliance Certification indicates that FormFactor was not maintaining all records that demonstrate continuous compliance with Subpart 6W, including records of all required notification and reports, with supporting documentation, and records showing compliance with the management practices, equipment maintenance, tank covers and wetting agent additions and surface tension measurements records.

39. FormFactor failed to timely submit annual certifications of compliance reports for the years of 2017, 2018, 2019, 2020 in violation of 40 C.F.R. § 63.11509(c).

40. FormFactor failed to keep the appropriate records in violation of 40 C.F.R. § 63.11509(e).

D. Terms of Consent Agreement

41. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;
- b. neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO;
- c. consents to the assessment of a civil penalty under this Section to settle this action, as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section I.C of this CAFO; and
- f. waives their rights to appeal the proposed Order contained in this CAFO.

E. Civil Penalty

42. Respondent agrees to:

- a. pay the civil penalty of TWO HUNDRED FIFTY-EIGHT THOUSAND ONE HUNDRED SEVENTY DOLLARS (\$258,170) (“EPA Penalty”) as settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of this CAFO, within 30 days of the Effective Date of this CAFO; and
- b. pay the EPA Penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/makepayment>, and identifying the payment with “Docket No. CAA-09-2024-0002.” Within 24 hours of payment of the EPA Penalty, send proof of payment to Kingsley Adeduro at adeduro.kingsley@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate the payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CAA-09-2024-0002”).

43. If Respondent does not timely pay the civil penalty, specified in Paragraph 42, then Respondent shall pay to the EPA a stipulated penalty in the amount of ONE THOUSAND DOLLARS (\$1000.00) for each day the default continues plus the remaining balance of the penalty sum specified in Paragraph 42 upon written demand by the EPA.

44. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C.

- § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
 - d. suspend or revoke Respondent's licenses or other privileges granted by EPA, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.

F. Certification of Compliance

45. Respondent certifies that as of the date of their signature of this Consent Agreement, Respondent is complying fully with all applicable statutory requirements of CAA Section 112, 42 U.S.C. § 7412 and the implementing regulations at 40 C.F.R. Part 63, Subpart 6W.

46. The provisions of this CAFO shall apply to and be binding upon Respondent and their officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

47. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

48. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

49. By signing this CAFO, Respondent certifies that the information they have supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

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

G. General Provisions

51. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

52. This civil penalty paid pursuant to this CAFO is not deductible for federal tax purposes.

53. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

54. This CAFO constitutes the entire agreement between the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

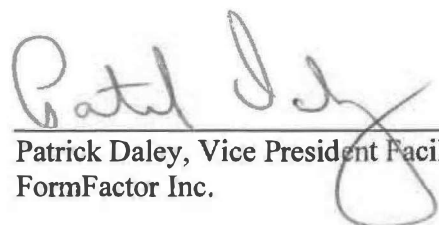
H. Effective Date

55. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of: FormFactor Inc. Docket No. CAA-09-2024-0002 is hereby stipulated, agreed, and approved for entry:

FormFactor Inc., Respondent

9/27/2023
Date



Patrick Daley, Vice President Facilities & EHS
FormFactor Inc.

The foregoing Consent Agreement In the Matter of: FormFactor Inc. Docket No. CAA-09-2024-0002 is hereby stipulated, agreed, and approved for entry:

United States Environmental Protection Agency, Complainant

AMY MILLER- Digitally signed by
BOWEN AMY MILLER-BOWEN
Date: 2023.10.06
16:11:22 -07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

**Consent Agreement and Final Order
In the Matter of: FormFactor Inc.
Docket No. CAA-09-2024-0002**

II. FINAL ORDER

EPA Region IX and FormFactor Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY, ORDERED that this Consent Agreement and Final Order (Docket No. CAA-09-2024-0002), shall be entered and Respondent shall pay a civil administrative penalty in the amount of TWO HUNDRED FIFTY-EIGHT THOUSAND ONE HUNDRED SEVENTY DOLLARS (\$258,170), and otherwise comply with the terms set forth in the CAFO. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEATRICE
WONG

Digitally signed by
BEATRICE WONG
Date: 2023.10.20
14:19:01 -07'00'

Beatrice Wong Date
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 9

