

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

In the matter of:)	U.S. EPA Docket No.:
)	RCRA-09-2007-0015
)	
JAZZ SEMICONDUCTOR, INC.,)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	PURSUANT TO
EPA Identification No.)	40 C.F.R. §§ 22.13 and 22.18
CAR000113233)	
)	
Respondent.)	
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CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA") as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation /Termination or Suspension of Permits, 40 C.F.R. Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Jazz Semiconductor, Inc. ("Jazz"), a California corporation.
2. Jazz manufactures semiconductor chips at its facility located at 4321 Jamboree Road, Newport Beach, California 92660 (the "facility"). In the course of its operations, Jazz generates and stores hazardous wastes at the facility. The facility's EPA ID number is CAR000113233.
3. This Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("Agreement"), which contains the elements required

by 40 C.F.R. §§ 22.14(a)(1)-(3) and (8), pursuant to 40 C.F.R. §§22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Jazz failed to comply with the contingency plan requirements of Title 22 of the California Code of Regulations (“22 CCR”) §66265.52 (*see also* 40 C.F.R. §265.52) and failed to comply with the air emissions standards for equipment leaks of 22 CCR §66265.1050¹ (*see also* 40 C.F.R. §265.1050). These are each in violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. §6921 *et seq.* and state regulations adopted pursuant to the approved California hazardous waste management program.

B. JURISDICTION

4. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. This authorization was updated on September 26, 2001 (*see* 66 FR 49118, September 26, 2001). The authorized program is established pursuant the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code (“H&SC”), and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 CCR §§66001 *et seq.* The State of California has been authorized for all the regulations referenced in this Agreement.
5. Jazz is a “person” as defined in 22 CCR § 66260.10 (*see also* 40 C.F.R. §260.10).
6. Jazz is the “operator” of a facility as defined in 22 CCR § 66260.10 (*see also* 40 C.F.R. §260.10).
7. Jazz is the “owner” of a facility as defined in 22 CCR § 66260.10 (*see also* 40 C.F.R. § 260.10).
8. Jazz is a “generator” of hazardous waste as defined in 22 CCR § 66260.10 (*see also* 40 C.F.R. § 260.10).

¹ Revisions to the authorized version of 22 CCR § 66265.1050 do not affect the alleged violations set forth herein.

9. Jazz generates and stores materials that are “wastes” as defined in 22 CCR §§ 66260.10 and 66261.2² (*see also* 40 C.F.R. §§ 260.10 and 261.2).
10. At the facility, Jazz generated hazardous waste as defined by California H&SC Section 25117, 22 CCR §§ 66260.10 and 66261.3³ (*see also* Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. §§ 260.10 and 261.3).⁴ This hazardous waste included, but may not be limited to, arsenic (D004), solvents (F003/D001), nitric acid waste (D002), rags contaminated with arsenic or solvents, and small amounts of ignitable wastes (D001).
11. On August 5, 2005, EPA conducted a RCRA compliance evaluation inspection (“CEI”) at the Facility. Based upon the findings made during the CEI, and additional information obtained subsequent to the CEI, EPA identified potential areas of Jazz’s non-compliance with California H&SC § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States.
12. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

² Revisions made to the authorized version of 22 CCR § 66261.2 do not affect the alleged violations set forth herein.

³ Revisions to the authorized versions of H&SC § 25117 and 22 CCR § 66261.3 do not affect the alleged violations set forth herein.

⁴ The definition of “hazardous waste” contained in the California statute and regulations is broader in scope than the definition contained in RCRA and the federal regulations. Those hazardous wastes regulated under California law, but not regulated as hazardous under federal law are known as “California wastes” and the portions of the California statute and regulations governing California wastes were not included in the provisions authorized under RCRA. Thus, EPA enforces California’s authorized program but does not enforce those aspects of the California program relating solely to California wastes.

13. A violation of California's authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921, *et seq.*
15. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT 1

Failure to Properly Maintain a Contingency Plan

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 CCR § 66262.34 (*see also* 40 C.F.R. § 262.34) allows generators of hazardous waste to accumulate such waste on-site for up to 90 days without a permit or grant of interim status provided that, among other things, the generator complies with the requirement for owners and operators to maintain a contingency plan in accordance with 22 CCR § 66265.52 (*see also* 40 C.F.R. § 265.52).
18. 22 CCR § 66265.52(d), (*see also* 40 C.F.R. § 265.52(d)), requires that the contingency plan include an updated "list [of] the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator . . ." At the time of the inspection, the facility's contingency plan did not contain this information.

19. 22 CCR § 66265.52(e), (*see also* 40 C.F.R. § 265.52(e)), requires that the contingency plan include an updated “list of all emergency equipment at the facility” including “the location and a physical description of each item on the list, and a brief outline of its capabilities.” At the time of the inspection, the facility’s contingency plan did not contain all of this information.
20. Therefore, EPA alleges that Jazz has violated 22 CCR § 66265.52 (*see also* 40 C.F.R. § 265.52), and RCRA.

COUNT 2

Failure to Comply with the Air Emissions Standards for Equipment Leaks

21. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.
22. 22 CCR § 66262.34 (*see also* 40 C.F.R. § 262.34) allows generators of hazardous waste to accumulate such waste on-site for up to 90 days without a permit or grant of interim status provided that, among other things, the waste is placed in containers and the generator complies with the air emissions standards for equipment leaks found at 22 CCR §§ 66265.1050 *et seq.* (*see also* 40 C.F.R. §§ 265.1050 *et seq.*).
23. 22 CCR § 66265.1050 (*see also* 40 C.F.R. §§ 265.1050) indicates that the regulations in Title 22, Chapter 15, Article 28 (Air Emissions Standards for Equipment Leaks) apply to owners and operators of facilities that treat, store or dispose of hazardous waste and, specifically, to equipment that contains or contacts RCRA hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in, among other things, “a unit that is exempt from permitting under the provisions of 66262.34(a) . . . and is not a recycling unit under the provisions of section 66261.6.” At the time of the inspection, wastes generated at the facility contained more than 10% organic concentrations by weight. Moreover, at that time, the waste was not managed in a unit that was neither exempt from permitting under the provisions of 22 CCR § 66262.34(a) nor was it a recycling unit under the provisions of 22 CCR § 66261.6.

24. In accordance with 22 CCR § 66265.1050(c), (*see also* 40 C.F.R. § 265.1050(c)), each piece of equipment “shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.” At the time of the inspection, equipment subject to this requirement, (*e.g.*, valves, flanges, pressure relief devices and other connections), was not marked in such a manner as to readily distinguish it from other equipment.
25. In accordance with 22 CCR § 66265.1057(a), (*see also* 40 C.F.R. § 265.1057(a)), each valve in gas/vapor or light liquid service “shall be monitored monthly to detect leaks by the methods specified in Section 66265.1063(b). . .” In accordance with 22 CCR § 66265.1063(b), leak detection monitoring required by 22 CCR §§ 66265.1052 through 66265.1062 shall comply with Reference Method 21 in 22 CCR § 66260.11 (*see also* 40 C.F.R. Part 60). At the time of the inspection, valves in gas/vapor or light liquid service at the facility were not monitored monthly in accordance with Reference Method 21.
26. In accordance with 22 CCR § 66265.1054(a), (*see also* 40 C.F.R. § 265.1054(a)), except during pressure releases, each pressure relief device in gas/vapor service “shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 [parts per million (“ppm”)] above background, as measured by the method specified in Section 66265.1063(c).” In addition, 22 CCR § 66265.1054(b), (*see also* 40 C.F.R. § 265.1054(b)), requires that, after each pressure release, the pressure relief device be “returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 24 hours after each pressure release . . .” This section also requires that within 24 hours of the pressure release, the pressure relief device must be monitored “to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section 66265.1063(c). At the time of the inspection, pressure relief devices at the facility were not operated with “no detectable emissions” or monitored to confirm such condition as required by 22 CCR § 66265.1054, (*see also* 40 C.F.R. § 265.1054).
27. In accordance with 22 CCR § 66265.1064(b)(1) (*see also* 40 C.F.R. § 265.1064(b)(1)), owners and operators of equipment that contains or

contacts RCRA hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in, among other things, “a unit that is exempt from permitting under the provisions of 66262.34(a) . . . and is not a recycling unit under the provisions of section 66261.6,” must maintain certain records. For each such piece of equipment, they must maintain records reflecting: an equipment identification number and hazardous waste management unit identification; approximate locations within the facility; the type of equipment; percent-by-weight total organics in the hazardous waste stream at the equipment; the hazardous waste state at the equipment (*e.g.*, gas/vapor or liquid); and the method of compliance with the standard (*e.g.*, “monthly leak detection and repair” or “equipped with dual mechanical seals”).

28. In accordance with 22 CCR § 66265.1064(g), (*see also* 40 C.F.R. § 265.1064(g)), owners and operators of equipment that contains or contacts RCRA hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in, among other things, “a unit that is exempt from permitting under the provisions of 66262.34(a) . . . and is not a recycling unit under the provisions of section 66261.6,” must maintain a log in the facility operating record that includes: (1) a list of identification numbers for the subject equipment (except welded fittings); (2) a list, signed by the owner or operator, of the identification numbers for equipment that the owner or operator elects to designate for no detectable emissions under sections 66265.1052(e), 66265.1053(i), or 66265.1057(f); (3) a list of equipment identification numbers for pressure relief devices subject to section 66265.1054(a); (4) information about compliance tests required under sections 66265.1052(e), 66265.1053(i), 66265.1054 and 66265.1057(f); (5) a list of identification numbers for equipment in vacuum service; and (6) identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.
29. At the time of the inspection, the records required to be maintained in accordance with 22 CCR §§ 66265.1064(b)(1) and (g) were not being maintained at the facility.

30. Therefore, EPA alleges that Jazz has violated 22 CCR §§ 66265.1050, 66265.1052, 66265.1054, 66265.1057, and 66265.1064(b)(1) and (g), (see also 40 C.F.R. §§ 265.1050, 265.1052, 265.1054, 265.1057 and 265.1064(b)(1) and (g)), and RCRA.

D. TERMS OF SETTLEMENT

31. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the June 2003 RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Jazz to comply with applicable requirements, and any economic benefit accruing to Jazz, as well as such other matters as justice may require, EPA proposes that Jazz be assessed a total of THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00) as the civil penalty for the violations alleged herein.
32. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996, see 61 Fed. Reg. 69360 (Dec. 31, 1996) and 69 Fed. Reg. 7121 (Feb. 13, 2004), authorizes a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after March 15, 2004. Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, the economic benefit gained from non-compliance, where appropriate, and case-specific circumstances. The settlement amount was also based upon Jazz's agreement to perform a SEP.
33. Jazz consents to the assessment of EPA's proposed civil penalty of THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00) and the performance of a Supplemental Environment Project ("SEP") in full satisfaction of all claims for civil penalties for the violations alleged in Section C of this Agreement. Such civil penalty amount shall become due and payable immediately upon Jazz's receipt of a true and correct copy of this Agreement. Jazz must pay the civil penalty no later than THIRTY (30) CALENDAR DAYS after the effective date of this Agreement.

34. No later than THIRTY (30) CALENDAR DAYS after the date on which this Agreement is mailed or hand-delivered to Jazz, Jazz shall initiate a project to promote awareness within the semiconductor industry of the RCRA air emissions requirements of 22 CCR §§ 66265.1050(c), and 66265.1054(a) (b) and (c), 66265.1057, and 66265.1064(b)(1) and (g), (*see also* 40 C.F.R. §§ 265.1050, 265.1052, 265.1054, 265.1057 and 265.1064(b)(1) and (g)), and compliance methods through sponsorship of training events at relevant Industry Association meetings and other outreach activities pursuant to the work plan.
35. Jazz shall complete the following SEP, which the parties agree is intended to secure significant environmental health protection and improvements.
 - (a) Jazz shall complete the SEP within one year following the effective date of this Agreement as follows:
 - (b) Within SIXTY (60) CALENDAR DAYS after the date on which this Agreement is mailed to Jazz, Jazz shall submit a work plan ("Work Plan") for EPA review and approval. The Work Plan shall address work activities to be undertaken after the due date for the Work Plan and need not address work activities to be undertaken prior to that date. After receipt of the Work Plan, EPA will notify Jazz, in writing, regarding: (1) any deficiencies in the Work Plan which require modification by Jazz, including the appropriate time frame for resubmittal of a modified Work Plan; (2) the approval of the Work Plan by EPA with modification; or (3) the approval of the Work Plan by EPA.
36. The total expenditure for the SEP shall be not less than TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00) in accordance with the specifications set forth in the Scope of Work. Jazz shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
37. Jazz hereby certifies that, as of the date of this Agreement, Jazz is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Jazz required to perform or develop the SEP

by any other agreement, grant or as injunctive relief in this or any other case. Jazz further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

38. Jazz shall submit a SEP Completion Report to EPA within one year of the effective date of this Agreement. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the SEP as implemented;
 - (ii) A description of any problems encountered during implementation of the SEP and the solutions thereto;
 - (iii) Itemized costs (to exclude any purely internal costs, such as employee salaries, etc.);
 - (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement; and
 - (v) A description of the environmental benefits resulting from implementation of the SEP (with a quantification of the benefits, if feasible).
39. Jazz agrees that failure to submit the SEP Completion Report required by the foregoing Paragraph shall be deemed a violation of this Agreement and Jazz shall become liable for stipulated penalties pursuant to Paragraph 59(e), below.
40. Jazz shall maintain legible copies of documentation of the outreach and educational activities conducted in the SEP Completion Report and shall provide the documentation to EPA not more than seven days after a request for such information. Jazz shall include with the SEP Completion Report the following certification under penalty of law that the information contained in the SEP Completion Report is true, accurate and not misleading, by the signature of an authorized corporate officer or director on the following statement: "I certify under penalty of law that I have examined and am familiar with the information submitted in this SEP Completion Report and all its attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

41. Jazz shall submit all notices and reports required by this Agreement by first class mail to:

Daniel Fernandez
WST 3
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

42. In itemizing its costs in the SEP Completion Report, Jazz shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For the purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
43. Jazz agrees that EPA or the California Department of Toxic Substances Control may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
44. After receipt of the SEP Completion Report, EPA will notify Jazz, in writing, regarding: (a) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Jazz to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 59 herein.
45. If EPA elects to exercise option (a) under the foregoing Paragraph, *i.e.*, if the SEP Completion Report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of

SEP completion itself, EPA shall permit Jazz the opportunity to object in writing to the notification of deficiency given pursuant to the foregoing Paragraph within ten (10) days of receipt of such notification. EPA and Jazz shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on any deficiencies in the SEP Completion Report to Jazz, which decision shall be final and binding upon Jazz. Jazz agrees to correct the deficiencies in the SEP Completion Report which have been identified by EPA within thirty (30) days of receipt of the notice of deficiency pursuant to the foregoing Paragraph or, if the provisions of this Paragraph are invoked, within thirty days of receipt of EPA's written statement of its decision regarding deficiencies in the SEP Completion Report.

46. If EPA elects to exercise option (c) under Paragraph 44, above, EPA shall permit Jazz the opportunity to object in writing to EPA's determination pursuant to this Paragraph within ten (10) days of receipt of such notification or rejection. EPA and Jazz shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach an agreement regarding the determination whether the SEP has been satisfactorily completed. If agreement between the Parties cannot be reached on this determination within this thirty (30) day period, then, within twenty (20) days of the end of the 30-day period above, EPA shall provide a written statement of its decision to Jazz and to the Director, Waste Management Division ("Division Director"). EPA's written statement of decision shall be subject to review by the Division Director. Jazz shall have twenty (20) days after receipt of EPA's written statement of decision to provide the Division Director with its written response to EPA's statement of decision. The Division Director shall then provide a written statement of its decision on adequacy of the completion of the SEP to Jazz, which decision shall be final and binding upon Jazz. The Parties agree that the determination of the Division Director regarding the satisfactory or unsatisfactory completion of the SEP be deemed effective within ten (10) working days after its issuance and shall be construed as the final agency action by EPA, which decision shall be final and binding upon Jazz.

In the event the SEP is not completed satisfactorily as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Jazz to EPA in accordance with Paragraph 59 herein.

47. Any public statement, oral or written, in print, film or other media, made by Jazz making reference to the SEP shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Resource Conservation and Recovery Act.”

E. ADMISSIONS AND WAIVERS OF RIGHTS

48. Jazz admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this Agreement and over Jazz pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Jazz admits to the jurisdictional allegations of facts and law set forth in Section B of this Agreement. Jazz consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this Agreement and to enforce its terms. Further, Jazz will not contest EPA's jurisdiction and authority to compel compliance with this Agreement in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this Agreement.
49. Jazz neither admits nor denies any allegations of fact or law set forth in Section C of this Agreement. Jazz hereby waives any rights it may have to contest the allegations set forth in this Agreement, waives any rights it may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this Agreement, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. §6928(b) and hereby consents to the issuance of this Agreement without adjudication. In addition, Jazz hereby waives any rights it may have to appeal the Final Order attached to this Consent Agreement and made part of this Agreement.

F. PARTIES BOUND

50. This Agreement shall apply to and be binding upon Jazz and its agents, successors and assigns and upon all persons acting under or for Jazz, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this Agreement shall terminate and constitute full settlement of the violations alleged herein.⁵
51. No change in ownership or any other legal status relating to the facility will in any way alter Jazz's obligations and responsibilities under this Agreement.
52. Jazz shall give prior notice of this Agreement to any successor in interest prior to transfer of ownership or operation of the facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this Agreement.
53. The undersigned representative of Jazz hereby certifies he or she is fully authorized to enter into this Agreement, to execute and to legally bind Jazz to it.

G. PAYMENT OF CIVIL PENALTY

54. In addition to performance of the SEP, Jazz consents to the assessment of and agrees to pay a civil penalty of THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00) in full settlement of the federal civil penalty claims set forth in this Agreement.

⁵ For the purposes of this Agreement, the term "violations alleged herein," in addition to the violations specifically alleged in Section C of this Agreement, shall be deemed to include both the violations referenced in EPA's letter to Jazz dated May 8, 2006, wherein Count 1 as alleged herein was inadvertently cited as a violation of 22 CCR §66265.50, rather than §66265.52.

55. Jazz shall submit payment of the THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLAR (\$3,750.00) civil penalty within thirty (30) calendar days of the Effective Date of this Agreement. The Effective Date of this Agreement is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. Payment shall be made by certified or cashier's check payable to the U.S. Environmental Protection Agency and transmitted to the appropriate address as indicated below:

For a check drawn on a U.S. bank sent by regular U.S. Postal Service mail:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

For a check drawn on a U.S. bank sent by express mail:

Mellon Client Service Center
ATTN: Shift Supervisor Lockbox 371099M
500 Ross Street
Pittsburgh, PA 15262-0001

At the time payment is so made, a copy of the check shall be sent to each of the following Region IX addresses:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Daniel Fernandez (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

56. All payments shall indicate the name of the Facility, EPA identification number of the Facility, Jazz's name and address, and the EPA docket number of this action.
57. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this Agreement to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this Agreement at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent thirty (30) day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Jazz will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

58. In the event Jazz fails to submit a payment to EPA by the time required in this Agreement, Jazz shall pay stipulated penalties up to FIVE HUNDRED DOLLARS (\$500.00) per day for the first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1,000.00) per day for the sixteenth to thirtieth day of delay, and up to FIFTEEN HUNDRED DOLLARS (\$1,500.00) per day for each day of delay thereafter.
59. In the event Jazz fails to comply with any terms or provisions of this Agreement relating to the performance of the SEP described in Paragraphs 34 through 47 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 36 above, Jazz shall be liable for stipulated penalties according to the provisions set forth below:
- (a) Except as provided in subparagraph (b) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Agreement, Jazz shall pay a stipulated penalty to the United

States in the amount of up to ELEVEN THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$11,250.00).

- (b) If the SEP is not completed in accordance with Paragraphs 34 through 47, but EPA determines that Jazz: (i) made good faith and timely efforts to complete the project; and (ii) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Jazz shall not be liable for any stipulated penalty.
 - (c) If the SEP is completed in accordance with Paragraphs 34 through 47, but Jazz spent less than 90 percent of the amount of money required to be spent for the project in accordance with Paragraph 36, Jazz shall pay a stipulated penalty to the United States in the amount of ONE THOUSAND SEVEN HUNDRED DOLLARS (\$1,700.00).
 - (d) If the SEP is completed in accordance with Paragraphs 34 through 47, and Jazz spent at least 90 percent of the amount of required to be spent for the project in accordance with Paragraph 36, Jazz shall not be liable for any stipulated penalty.
 - (e) For failure to submit the SEP Completion Report required by the time(s) specified in Paragraph 38 above, Jazz shall pay a stipulated penalty in the following amounts, as applicable, for each day after the date that SEP Completion Report was due, as set forth in Paragraph 38, until the SEP Completion Report is submitted: up to FIVE HUNDRED DOLLARS (\$500.00) per day for the first to fifteenth day of delay, up to ONE THOUSAND DOLLARS (\$1000.00) per day for the sixteenth to thirtieth day of delay, and up to ONE THOUSAND FIVE HUNDRED DOLLARS (\$1500.00) per day for each day of delay thereafter.
60. All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.

61. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a written demand by EPA for such penalties. Such demand shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Payment shall be made by check transmitted to the appropriate address as indicated below:

For a check drawn on a U.S. bank sent by regular U.S. Postal Service mail:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

For a check drawn on a U.S. bank sent by express mail:

Mellon Client Service Center
ATTN: Shift Supervisor Lockbox 371099M
500 Ross Street
Pittsburgh, PA 15262-0001

At the time payment is so made, a copy of the check shall be sent to each of the following Region IX addresses:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Daniel Fernandez (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

62. All payments shall indicate the name of the Facility, EPA identification number of the Facility, Jazz's name and address, and the EPA docket number of this action.
63. The payment of stipulated penalties shall not alter in any way Jazz's obligation to complete the performance required hereunder.
64. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Jazz's failure to comply with any of the requirements of this Agreement.
65. Jazz shall perform the requirements set forth in this Agreement within the time limits established in the Agreement, unless performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as an event arising from causes which are not foreseeable, which are totally beyond the control of Jazz, including its consultants and contractors, which could not be overcome by the exercise of due diligence, and which delay or prevent the performance of any requirement of this Agreement by the date required in the Agreement. Such events do not include unanticipated or increased costs of performance, or normal precipitation events.
66. If any event, including a force majeure event, occurs which causes or may cause delays in the completion of a requirement under this Agreement, Jazz shall notify EPA in writing within 10 days of the delay or Jazz's knowledge of the anticipated delay, whichever is earlier. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Jazz shall notify EPA in writing within 10 days of the delay or Jazz's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Jazz to prevent or minimize the delay, and the timetable by which those measures will be implemented. Jazz shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Jazz to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of Jazz's right to request an

extension of its obligation under this Agreement based on such incident.

67. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Jazz, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
68. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances beyond the control of Jazz, EPA will notify Jazz in writing of its decision and any delays in the completion of the Agreement shall not be excused. The burden of proving that any delay is caused by circumstances entirely beyond the control of Jazz shall rest with Jazz. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under the foregoing Paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

I. RESERVATION OF RIGHTS

69. EPA expressly reserves all rights and defenses that it may have.
70. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Jazz perform tasks in addition to those required by this Agreement. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Jazz's failure to comply with any of the requirements of this Agreement, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. §6928(c). This Agreement shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability

Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.

71. Compliance by Jazz with the terms of this Agreement shall not relieve Jazz of its obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
72. The entry of this Agreement and Jazz's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to Jazz's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this Agreement.
73. This Agreement is not intended to be nor shall it be construed as a permit. This Agreement does not relieve Jazz of any obligation to obtain and comply with any local, State or federal permits.
74. This Agreement shall not be construed to constitute EPA approval of any equipment or technology utilized by Jazz in connection with the SEP undertaken pursuant to this Agreement.

J. OTHER CLAIMS

75. Nothing in this Agreement shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

K. MISCELLANEOUS

76. By signing this Agreement, Jazz, without admitting or denying them, certifies that all of the alleged violations set forth in Section C of this Agreement, which are or were capable of correction, have been corrected.

77. This Agreement may be amended or modified only by written agreement executed by both EPA and Jazz.
78. The headings in this Agreement are for convenience of reference only and shall not affect interpretation of this Agreement.
79. The Effective Date of this Agreement is the date the Agreement is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

07/09/07


Date



Gilbert F. Amelio
Chief Executive Officer
Jazz Semiconductor, Inc.

8 20 07

Date


Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§22.13 and 22.18 ("Agreement") (U.S. EPA Docket No. RCRA - 09-2007-0015) be entered and that Jazz Semiconductor, Inc., ("Jazz") pay a civil penalty of THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$3,750.00) by certified or cashier's check made out to the "U.S. Environmental Protection Agency," and sent in accordance with Section G of this Agreement within thirty (30) days after the Effective Date of this Agreement. A copy of the check shall be sent to the EPA Region IX addresses specified in Section G of this Agreement within such thirty (30) day period. Jazz shall also perform all tasks required by the Agreement, including the performance of the Supplemental Environmental Project in accordance with Section D.

This Final Order, once signed, shall be effective immediately upon its filing with the Regional Hearing Clerk.

09/11/07

Date



Steven Jawgiel

Regional Judicial Officer

United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Gilbert F. Amelio
Chief Executive Officer
Newport Fab LLC DBE
Jazz Semiconductors
4321 Jamboree Rd.
Newport Beach, CA 92660

9-12-07

Date

Danielle Carr

Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX