

1 2. This CA/FO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), simultaneously commences
2 and concludes this proceeding, wherein EPA alleges that Respondent violated
3 Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and their implementing
4 regulations.

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6 B. STATUTORY AND REGULATORY FRAMEWORK

7 3. Section 311 of EPCRA, 42 U.S.C. § 11021(a), and 40 C.F.R. 370.21, provide that the
8 owner or operator of a facility is required to submit a Material Safety Data Sheet
9 (“MSDS”), or an alternative MSDS reporting list, to the Local Emergency Planning
10 Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the
11 fire department with jurisdiction over the facility for each hazardous chemical present at
12 the facility according to the minimum threshold schedule provided in paragraph (b) of 40
13 C.F.R. § 370.20.

14 4. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25, require the owner or
15 operator of a facility that is required to prepare or have available an MSDS for a
16 hazardous chemical under Occupational Safety and Health Act of 1970 (“OSHA”), 29
17 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory
18 form (“Inventory Form”) if hazardous chemicals are present at the facility during the
19 preceding calendar year in quantities above the threshold levels established in 40 C.F.R. §
20 370.20(b). The Inventory Form must be submitted by March 1 of each year to the SERC,
21 the LEPC, and the fire department having jurisdiction over the facility.

1 C. GENERAL ALLEGATIONS

2 5. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil penalties
3 for any violation of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022.

4 6. The Administrator of EPA has delegated enforcement authority under EPCRA to the
5 Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional
6 Administrator, EPA Region IX, in turn, has delegated the authority to enforce EPCRA
7 §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund Division with
8 delegation R9 1290.18.

9 7. Respondent manufactures and markets specialty polymer and electronic materials for
10 targeted applications, focused on communication and computer markets, at 2225 West
11 Chandler Boulevard, in Maricopa County, Chandler, AZ (the "Facility").

12 8. On or before December 31, 2005, Respondent produced, used, or distributed Barium
13 Titanate, Chemical Abstract Service Registry ("CAS") Number 12047-27-7, at the
14 Facility.

15 9. In 2005 a daily average of 26,310 pounds (lbs.) of Barium Titanate was present at the
16 Facility.

17 10. In a letter dated August 14, 2006, Respondent voluntarily disclosed to EPA that it had not
18 submitted an MSDS for Barium Titanate, or an Inventory Form including Barium
19 Titanate for the calendar year 2005, as required by Sections 311 and 312 of EPCRA, 42
20 U.S.C. §§ 11021 and 11022.

21 11. The Arizona SERC is comprised of members from state agencies with roles in hazardous
22 material emergency management, Arizona's 15 LEPCs, as well as representatives from
23 local government and industry.

- 1 12. The Maricopa County LEPC is the LEPC with jurisdiction over the Facility.
- 2 13. The City of Chandler Fire Department is the fire department having jurisdiction over the
- 3 Facility.
- 4 14. On August 11, 2006, Respondent submitted an alternative MSDS reporting list, and an
- 5 Inventory Form containing information on Barium Titanate used at the Facility during
- 6 calendar year 2005 to the Arizona SERC, the Maricopa County LEPC, and the City of
- 7 Chandler Fire Department.
- 8

9 D. ALLEGED VIOLATIONS

10 COUNT I

11 (Failure to Timely Submit MSDS)

- 12 15. Paragraphs 1 through 14 above are incorporated herein by this reference as if they were
- 13 set forth here in their entirety.
- 14 16. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.
- 15 § 11049(4).
- 16 17. At all times relevant to this CA/FO, Respondent has been the owner or operator of the
- 17 Facility.
- 18 18. At all times relevant to this CA/FO, Respondent has been a "person" as defined by
- 19 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- 20 19. Respondent is required to prepare or have available an MSDS under 29 C.F.R.
- 21 § 1910.1200(g) because it is engaged in a business where chemicals are either used or
- 22 distributed, or are produced for use or distribution.

1 20. As of December 2005, Respondent used Barium Titanate, at the Facility in quantities
2 above the applicable thresholds established in 40 C.F.R. § 370.20(b).

3 21. Respondent's failure to submit MSDS information for Barium Titanate present at the
4 facility to the SERC, the LEPC, and the fire department within three months after receipt
5 of the Barium Titanate at the facility in an amount exceeding the threshold established at
6 40 C.F.R. § 370.20(b), is a violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

7
8 COUNT II

9 (Failure to Timely Submit Annual Chemical Inventory Forms)

10 22. Paragraphs 1 through 21 above are incorporated herein by this reference as if they were
11 set forth here in their entirety.

12 23. Barium Titanate is a "hazardous chemical" as defined in Section 312(c) of EPCRA, 42
13 U.S.C. § 11022(c).

14 24. Respondent's failure to include Barium Titanate on the Inventory Form containing
15 information on hazardous chemicals present at the Facility during calendar year 2005 to
16 the SERC, the LEPC, and the appropriate fire department on or before March 1 of 2006 is
17 a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

18
19 E. CIVIL PENALTY

20 25. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt
21 Collection Improvement Act of 1996, *see* 40 C.F.R. Part 19, authorizes a civil penalty of
22 up to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997.

1 For violations that occur on or after March 15, 2004, a civil administrative penalty of
2 \$32,500 per day is authorized.

3 26. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery,*
4 *Disclosures, Correction and Prevention of Violations*, 65 Fed Reg 19618, ("Audit
5 Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially
6 reduce the gravity component of a penalty if it determines that a respondent has satisfied
7 the nine conditions set forth in the Audit Policy.

8 27. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic
9 discovery of the violation through an environmental audit or a compliance management
10 system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure
11 independent of government or third party plaintiff; (5) correction and remediation; (6)
12 prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9)
13 cooperation.

14 28. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit
15 Policy may not face any gravity-based civil penalties. If the regulated entity meets all but
16 the first condition (Systematic Discovery), EPA may reduce the gravity-based penalties
17 by 75%. EPA reserves the right to collect any economic benefit realized as a result of the
18 violation disclosed.

19 29. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions
20 outlined in the audit policy and therefore will not face gravity-based civil penalties.

21 30. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance
22 Management System. Respondent discovered the violations as the result of a routine,
23 regularly scheduled environmental audit conducted at Rogers Corporation, on July 27,

1 2006. The audit was done pursuant to Rogers Corporation's environmental health and
2 safety self-audit program, to determine compliance with applicable environmental laws
3 and regulations.

4 31. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did
5 not result from any legally mandated monitoring or sampling requirement prescribed by
6 statute, regulation, permit, judicial or administrative order, or consent agreement.

7 32. Prompt Disclosure. Respondent fully disclosed the violations to EPA within 21 days
8 after it discovered the violations had, or may have, occurred. The violations were
9 discovered on July 27, 2006, and were reported to EPA in a letter dated August 14, 2006.

10 33. Discovery and Disclosure Independent of Government or Third Party Plaintiff.

11 Respondent discovered and disclosed the violations to EPA prior to any federal, state, or
12 local agency inspection or investigation, notice of citizen suit, the filing of a third-party
13 complaint, the reporting of the violations by a "whistle-blower," or imminent discovery
14 by a regulatory agency.

15 34. Correction and Remediation. Respondent submitted the MSDS, and the revised
16 Inventory Form for calendar year 2005, to the Arizona SERC, the Maricopa County
17 LEPC, and the City of Chandler Fire Department, on August 14, 2006. The disclosed
18 violations did not cause any environmental or human harm.

19 35. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to
20 prevent a recurrence of any violation of Sections 311 and 312 of EPCRA, 42 U.S.C. §§
21 11021 and 11022: Respondent will refine its chemical inventory system and retrain staff
22 responsible for purchasing chemicals to ensure entry of all chemicals into its chemical
23 inventory system.

- 1 36. No Repeat Violations. Respondent has not had any other occurrence of these specific
2 violations at the Facility within the past three years or at any other facility owned or
3 operated by Respondent within the past five years.
- 4 37. Other Violations Excluded. The violations did not result in serious actual harm, present
5 an imminent and substantial endangerment to public health or the environment, or violate
6 the specific terms of any judicial or administrative order or consent agreement.
- 7 38. Cooperation. Respondent has fully cooperated with EPA in determining the applicability
8 of the Audit Policy.
- 9 39. In signing this CA/FO, Respondent certifies under penalty of law that the information
10 submitted to EPA in the letter dated August 14, 2006, disclosing violations of
11 EPCRA Sections 311 and 312, 42 U.S.C. §§ 11021 and 11022, and the information in
12 paragraphs 30-38 of this CA/FO are based upon true, accurate, and complete information
13 that the signatory can verify personally, or regarding which the signatory has inquired of
14 the person or persons directly responsible for gathering the information.
- 15 40. EPA has determined that the violations resulted in an insignificant amount of economic
16 benefit.
- 17 41. For the reasons set forth above, all penalties based on the gravity of the violations and the
18 savings of economic costs related to the failure to timely submit MSDS and a revised
19 Inventory Form are waived.

20
21 F. ADMISSIONS AND WAIVERS

- 22 42. For purposes of this proceeding, Respondent admits the jurisdictional allegations above,
23 and agrees that the EPA Administrator and Region IX Administrator have jurisdiction

1 and authority over the subject matter of the action commenced in this CA/FO and over
2 Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R.
3 §§ 22.4 and 22.34. Respondent consents to and agrees not to contest EPA's jurisdiction
4 and authority to enter into and issue this CA/FO and to enforce its terms. Further,
5 Respondent will not contest EPA's jurisdiction and authority to compel compliance with
6 this CA/FO in any enforcement proceedings, either administrative or judicial, or to
7 impose sanctions for violations of this CA/FO.

8 43. Respondent admits any allegations of fact or law set forth in Section C and D of this
9 CA/FO. Respondent hereby waives any rights it may have to contest the allegations set
10 forth in this CA/FO and waives any rights it may have to a hearing on any issue relating
11 to the factual allegations or legal conclusions set forth in this CA/FO, including without
12 limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent
13 hereby consents to the issuance of this CA/FO without adjudication and waives any rights
14 it may have to appeal the Final Order attached to this Consent Agreement and made part
15 of this CA/FO.

16
17 G. PARTIES BOUND

18 44. This CA/FO shall apply to and be binding upon Respondent and its agents, successors,
19 and assigns and upon all persons acting under or for Respondent. This CA/FO shall
20 constitute full settlement of the violations alleged herein.

21 45. No change in ownership or corporate, partnership, or legal status relating to the Facility
22 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

1 46. The undersigned representative of Respondent hereby certifies that he or she is fully
2 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind
3 Respondent to it.
4

5 H. PAYMENT OF CIVIL PENALTY

6 47. Because EPA has concluded that Respondent has, as described herein, satisfied all nine
7 conditions set forth in the Audit Policy, Complainant has not sought gravity-based
8 penalties for the violations alleged.

9 48. Based on Complainant's determination that any economic benefit derived from the
10 violations was insignificant, Complainant has not sought to collect any economic benefit
11 penalty for the violations alleged.

12 49. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
13 amount of ZERO DOLLARS (\$0) in settlement of the violations set forth in Section D
14 above. This CA/FO constitutes a settlement of the civil and administrative penalty claims
15 of the United States for the violations of Sections 311 and 312 of EPCRA specifically
16 alleged in Section D above.

17 50. The effect of the settlement described above is conditional upon the accuracy of
18 Respondent's representations to EPA as memorialized in paragraphs 30-38 of this CA/FO
19 and Respondent's self-disclosure dated August 14, 2006.
20

21 I. RESERVATION OF RIGHTS

22 51. EPA expressly reserves all rights and defenses that it may have.

1 52. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and
2 remedies, both legal and equitable, including without limitation, the right to require
3 Respondent to perform tasks in addition to those required by this CA/FO and the right to
4 assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other
5 appropriate action, in the event that Respondent fails to comply with any of the
6 requirements of this CA/FO.

7 53. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or
8 limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has
9 under EPCRA or any other statutory, regulatory, or common law enforcement authority
10 of the United States, except as otherwise set forth herein.

11 54. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
12 preclude EPA from taking additional enforcement actions should EPA determine that
13 such actions are warranted, except as they relate to Respondent's liability for federal civil
14 penalties for the specific alleged violations set forth in Section D of this CA/FO.

15 55. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO
16 does not relieve Respondent of any obligation to obtain and comply with any local, state,
17 or federal permits.

18 56. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released
19 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves
20 its right to seek reimbursement from Respondent for any response costs incurred by the
21 United States that may result or arise from the alleged counts set forth in Section D.
22

1 J. OTHER CLAIMS

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

8
9 K. MISCELLANEOUS

10 58. This CA/FO may be amended or modified only by written agreement executed by both
11 EPA and Respondent.

12 59. The headings in this CA/FO are for convenience of reference only and shall not affect
13 interpretation of this CA/FO.

14 60. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
15 proceeding.

16 61. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective
17 on the date that the Final Order contained in this CA/FO, having been approved and
18 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

1 IT IS SO AGREED,

2
3 5-31-07

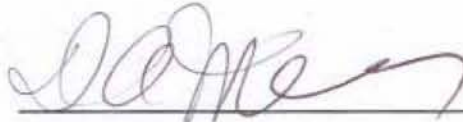
Date



Michael Bessette
Vice President
Durel Division
Rogers Corporation

4
5 6/14/07

Date

for 


Keith Takata
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA-9-2007- 0007) be entered and that Respondent pay a civil penalty in the amount of ZERO DOLLARS (\$0).

06/29/07
Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. EPCRA-9-2007- 0007

I hereby certify that the original copy of the foregoing Consent Agreement and Final Order, with the Docket number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Jeffrey S. Stewart
Manager, Corporate Environmental -
Health & Safety Engineering, West
Rogers Corporation
100 N. Dobson Road
Chandler, AZ 85224

June 29, 2007
Date

Danielle E. Carr

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