

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

2011 JUN 27 AM 11:08

REGIONAL PUBLIC CLERK

IN THE MATTER OF:)	Docket No.
)	EPCRA-09-2011-0003
Rockwell Collins)	CONSENT AGREEMENT
ElectroMechanical Systems, Inc.)	
400 Collins Road)	AND
Cedar Rapids, Iowa 52498)	FINAL ORDER
)	PURSUANT TO 40 CFR
Respondent.)	SECTIONS 22.13 and 22.18
)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Rockwell Collins ElectroMechanical Systems, Inc., a corporation organized under the laws of the state of Delaware.
2. This CA/FO, pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the implementing regulations.

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B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 CFR § 370.25, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 651 *et seq.*, and to submit an annual emergency and hazardous chemical inventory form (“Inventory Form”) if hazardous chemicals are present at the facility during the preceding calendar year in quantities above the threshold levels established in 40 CFR § 370.20(b). The Inventory Form must be submitted by March 1 of each year to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the fire department(s) having jurisdiction over the facility.

C. GENERAL ALLEGATIONS

4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil penalties for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.
5. The Administrator of EPA has delegated enforcement authority under EPCRA to the Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, has delegated the authority to enforce EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund Division with delegation R9 1290.18.
6. Respondent owns and operates a facility located at 1822 Deere Avenue, Irvine, CA 92606 (the “Facility”).

- 1 7. On or before November 22, 2004, Respondent produced, used, or distributed: liquid
2 nitrogen, CAS Number 7727-37-9, hydrofluoric acid CAS Number 7664-39-3 and
3 lubricating oils, hazardous chemicals as defined at the Facilities in quantities equal to or
4 exceeding the threshold planning quantities (TPQs).
- 5 8. Each calendar year from 2007 through 2009, a maximum amount of 24,150 pounds of
6 liquid nitrogen and 443 pounds of hydrofluoric acid were present at the Facility.
- 7 9. In calendar year 2009, a maximum amount of 11,400 pounds of lubricating oils were
8 present at the Facility.
- 9 10. In a letter dated March 29, 2010, Respondent voluntarily disclosed to EPA that it had not
10 submitted Inventory Forms for liquid nitrogen for the calendar years 2007, 2008 and
11 2009 and for lubricating oils for the year 2009 as required by Section 312 of EPCRA, 42
12 U.S.C. § 11022.
- 13 11. After completing the process of verifying its Section 312 reporting threshold
14 determinations for each of the three years at issue, Respondent voluntarily disclosed via a
15 supplemental disclosure letter dated April 30, 2010 that it had not submitted Inventory
16 Forms for hydrofluoric acid used at the Facility during calendar years 2007, 2008 and
17 2009 as required by Section 312 of EPCRA, 42 U.S.C. § 11022.
- 18 12. The duties of the California SERC are managed by the California Office of Emergency
19 Management (CalEMA). In California, the point of compliance for the chemical
20 inventory reporting, has been delegated down to the Certified Unified Program Agencies
21 (“CUPAs”), the administering agencies (“AA”).
- 22 13. The Orange County CUPA is the AA with jurisdiction over the Facility
- 23 14. The City of Irvine Fire Department is the fire department that has jurisdiction over

1 the Facility.

2 15. On March 29, 2010, Respondent submitted Inventory Forms containing information on
3 liquid nitrogen and lubricating oils used at the Facility during calendar years 2007, 2008
4 and 2009 to the California SERC, the Orange County CUPA, and the City of Irvine Fire
5 Department.

6 16. On April 30, 2010, Respondent submitted Inventory Forms containing information on
7 hydrofluoric acid used at the Facility during calendar years 2007, 2008 and 2009 to the
8 California SERC, the Orange County CUPA, and the City of Irvine Fire Department.

1 D. ALLEGED VIOLATIONS

2 COUNT I

3 (Failure to Timely Submit Annual Chemical Inventory Forms)

4 17. Paragraphs 1 through 13 above are incorporated herein by this reference as if they were
5 set forth here in their entirety.

6 18. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C.
7 § 11049(4).

8 19. At all times relevant to this CA/FO, Respondent has been the owner or operator of the
9 Facility.

10 20. At all times relevant to this CA/FO, Respondent has been a "person" as defined by
11 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12 21. Respondent is required to prepare or have available an MSDS under 29 CFR
13 § 1910.1200(g) because it is engaged in a business where chemicals are either used or
14 distributed, or are produced for use or distribution.

15 22. Hydrofluoric acid is an "Extremely Hazardous Substance" as defined under Section
16 329(3) of EPCRA, 42 U.S.C. § 11049(3).

17 23. Liquid nitrogen, hydrofluoric acid and lubricating oils are "hazardous chemicals" as
18 defined under Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et*
19 *seq.*

20 24. Between 2007 and 2009 Respondent used liquid nitrogen, hydrofluoric acid and liquid
21 oils at the Facility in quantities above the applicable thresholds established in 40 CFR
22 § 370.20(b).

1 25. Respondent's failure to submit Inventory Forms containing information on hazardous
2 chemicals present at the Facility during calendar years 2007, 2008, and 2009 to the
3 SERC, the Orange County CUPA, and the appropriate fire department(s) on or before
4 March 1 of 2007, 2008 and 2009 is a violation of Section 312 of EPCRA, 42 U.S.C.
5 § 11022.

6 E. CIVIL PENALTY

7 26. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt
8 Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up
9 to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997. For
10 violations that occur on or after March 15, 2004, a civil administrative penalty of \$32,500
11 per day is authorized. For violations that occur on or after January 12, 2009, a civil
12 administrative penalty of \$37,500 per day is authorized.

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

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

- 1 29. Under the “Expanded Options for Discovery of violations” as described in the *Small*
2 *Business Compliance Policy of May 11, 2000*, a disclosure may include a violation
3 discovered via “any means.”
- 4 30. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit
5 Policy will not face any gravity-based civil penalties. If the regulated entity meets all but
6 the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties
7 by 75%. EPA reserves the right to collect any economic benefit realized as a result of the
8 violation disclosed.
- 9 31. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions
10 outlined in the Audit Policy and therefore will not face gravity-based civil penalties.
- 11 32. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance
12 Management System or (per the *Small Business Compliance Policy of May 11 2000*)
13 “any means”. Respondent discovered the violations on March 12, 2010, during an
14 internal environmental audit of the Facility.
- 15 33. Voluntary Discovery. Respondent’s discovery of the violations was voluntary and did
16 not result from any legally mandated monitoring or sampling requirement prescribed by
17 statute, regulation, permit, judicial or administrative order, or consent agreement.
- 18 34. Prompt Disclosure. Respondent disclosed violations to EPA within 21 days after it
19 discovered the violations had, or may have, occurred, advised that the process of
20 verifying its EPCRA Section 312 reporting thresholds for the prior three years was
21 ongoing and advised that there may be additional violations discovered. The initial
22 violations were discovered on March 12, 2010, and were reported to the EPA 17 days

1 later in a letter dated March 29, 2010. Respondent supplemented these disclosures to
2 report additional violations on April 30, 2010.

3 35. Discovery and Disclosure Independent of Government or Third Party Plaintiff.

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

8 36. Correction and Remediation. Respondent provided the chemical hazard information and
9 submitted the Inventory Forms for calendar years 2007, 2008 and 2009 to the SERC, the
10 LEPC, and the fire department on March 29, 2010. Supplemental Inventory Reports
11 were submitted to the SERC, the LEPC, and the fire department on April 30, 2010. The
12 disclosed violations did not cause any environmental or human harm.

13 37. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to
14 prevent a recurrence of any violation of Section 312 of EPCRA, 42 U.S.C. § 11022:

15 Respondent has implemented a procedure for reviewing EPCRA § 312 violations
16 annually whereby the relevant recording thresholds and requirements will be assessed
17 and fulfilled in advance of the March 1st, reporting date. Respondent will also continue
18 its internal audit procedures and monitor compliance.

19 38. No Repeat Violations. Respondent has not had any other occurrence of these specific
20 violations at the Facility within the past three years or at any other facility owned or
21 operated by Respondent within the past five years.

1 39. Other Violations Excluded. The violations did not result in serious actual harm, present
2 an imminent and substantial endangerment to public health or the environment, or violate
3 the specific terms of any judicial or administrative order or consent agreement.

4 40. Cooperation. Respondent has fully cooperated with EPA in determining the applicability
5 of the Audit Policy.

6 41. In signing this CA/FO, Respondent certifies under penalty of law that the information
7 submitted to EPA in the letters dated March 29, 2010 and April 30, 2010, disclosing
8 violations of EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs
9 32-40 of this CA/FO are based upon true, accurate, and complete information that the
10 signatory can verify personally, or regarding which the signatory has inquired of the
11 person or persons directly responsible for gathering the information.

12 42. EPA has determined that the violations resulted in an insignificant amount of economic
13 benefit.

14 43. For the reasons set forth above, all penalties based on the gravity of the violations and the
15 savings of economic costs related to the failure to timely submit the Inventory Forms are
16 waived.

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18 F. ADMISSIONS AND WAIVERS

19 44. For purposes of this proceeding, Respondent admits the jurisdictional allegations above,
20 and agrees that the EPA Administrator and Region IX Administrator have jurisdiction
21 and authority over the subject matter of the action commenced in this CA/FO and over
22 Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR §§ 22.4
23 and 22.34. Respondent consents to and agrees not to contest EPA's jurisdiction and

1 authority to enter into and issue this CA/FO and to enforce its terms. Further,
2 Respondent will not contest EPA's jurisdiction and authority to compel compliance with
3 this CA/FO in any enforcement proceedings, either administrative or judicial, or to
4 impose sanctions for violations of this CA/FO.

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

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14 G. PARTIES BOUND

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

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

20 48. The undersigned representative of Respondent hereby certifies that he or she is fully
21 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind
22 Respondent to it.

1 **H. PAYMENT OF CIVIL PENALTY**

2 49. Because EPA has concluded that Respondent has, as described herein, satisfied the nine
3 conditions set forth in the Audit Policy, Complainant has not sought gravity-based
4 penalties for the violations alleged.

5 50. Based on Complainant's determination that any economic benefit derived from the
6 violations was insignificant, Complainant has not sought to collect any economic benefit
7 penalty for the violations alleged.

8 51. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
9 amount of ZERO DOLLARS (\$0) in settlement of the violations set forth in Section D
10 above. This CA/FO constitutes a settlement of the civil and administrative penalty claims
11 of the United States for the violations of Section 312 of EPCRA specifically alleged in
12 Section D above.

13 52. The effect of the settlement described above is conditional upon the accuracy of
14 Respondent's representations to EPA as memorialized in paragraphs 32-40 of this CA/FO
15 and Respondent's self-disclosures dated March 29, 2010 and April 30, 2010.
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17 **I. RESERVATION OF RIGHTS**

18 53. EPA expressly reserves all rights and defenses that it may have.

19 54. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and
20 remedies, both legal and equitable, including without limitation, the right to require
21 Respondent to perform tasks in addition to those required by this CA/FO and the right to
22 assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other

1 appropriate action, in the event that Respondent fails to comply with any of the
2 requirements of this CA/FO.

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

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

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

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

18
19 J. OTHER CLAIMS

20 59. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
21 cause of action, or demand in law or equity by or against any person, firm, partnership,
22 entity, or corporation for any liability it may have arising out of or relating in any way to
23 the generation, storage, treatment, handling, transportation, release, or disposal of any

1 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
2 contaminants found at, taken to, or taken from the Facility.

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4 **K. MISCELLANEOUS**

5 60. This CA/FO may be amended or modified only by written agreement executed by both
6 EPA and Respondent.

7 61. The headings in this CA/FO are for convenience of reference only and shall not affect
8 interpretation of this CA/FO.

9 62. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
10 proceeding.

11 63. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on
12 the date that the Final Order contained in this CA/FO, having been approved and issued
13 by either the Regional Judicial Officer or Regional Administrator, is filed.

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IT IS SO AGREED,

Rockwell Collins ElectroMechanical Systems, Inc.


January 5, 2011

Date


By: David Rokos, Vice President & Treasurer

25 January 2011

Date



For Jane Diamond
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-09-²⁰¹¹⁻⁰⁰⁰³~~2010-80~~) be entered and that Respondent pay a civil penalty in the amount of ZERO DOLLARS (\$0).

01/26/11
Date



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

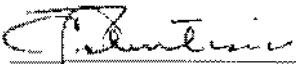
CERTIFICATE OF SERVICE

Docket No. EPCRA-09-2011-0003

I hereby certify that the original of the foregoing Consent Agreement and Final Order with the docket number referenced above has been filed with the Regional Hearing Clerk, Region IX, and that a copy will be sent by Certified Mail, Return Receipt Requested, to:

Thomas D. Genter
Director, Environmental Health and Safety
Rockwell Collins
400 Collins Road NE M/S 193-102
Cedar Rapids, IA 52498

1/27/11
Date



per Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA