

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

_____ )	
In the Matter of: )	
)	
Fairchild Semiconductor Corporation )	Docket No. RCRA-01-2021-0007
333 Western Avenue )	
South Portland, Maine 04106 )	
)	
Proceeding under Section 3008(a) )	CONSENT AGREEMENT AND
of the Resource Conservation and )	FINAL ORDER
Recovery Act, 42 U.S.C. § 6928(a) )	
_____ )	

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. The U.S. Environmental Protection Agency (“EPA”), Region 1, alleges that Fairchild Semiconductor Corporation (“Fairchild” or “Respondent”) has violated the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6987, and federal regulations promulgated pursuant to RCRA. EPA Region I (“Complainant”) and Fairchild (together, the “Parties”) have agreed to settle this matter through this Consent Agreement and Final Order (“CAFO”). EPA’s procedural regulations governing administrative enforcement actions and settlements are set out in the Consolidated Rules of Practice (“Consolidated Rules”) at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, this CAFO simultaneously commences and concludes this action.

2. EPA Region 1 has brought this RCRA federal enforcement action to obtain civil penalties and compliance. Specifically, Complainant seeks civil penalties pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for Respondent’s alleged violations of

regulations promulgated or authorized pursuant to RCRA. Complainant also seeks compliance pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to ensure that Respondent complies with RCRA and its implementing regulations.

3. EPA Region 1 has given notice of this RCRA enforcement action to the State of Maine pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. The Parties have agreed that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving the matter.

## II. BACKGROUND FACTS

5. Fairchild is a Delaware corporation that owns and operates a semiconductor manufacturing facility at 333 Western Avenue in South Portland, Maine (“Facility”). Since September 2016, Fairchild has been a wholly-owned subsidiary of ON Semiconductor Corporation (“ON Semiconductor”).

6. On April 30 to May 2, 2019, EPA conducted a RCRA compliance evaluation inspection (“EPA’s RCRA Inspection”) at the Facility.

7. On June 3, 2020, EPA Region 1 issued a Notice of Potential Violation and Opportunity to Confer letter (“NOPV letter”) to ON Semiconductor, Fairchild’s corporate parent, regarding potential RCRA violations identified at the Facility during EPA’s RCRA Inspection.

8. On July 14, 2020, EPA Region 1 and representatives from ON Semiconductor and the Facility held a video conference to discuss the NOPV letter.

### III. ALLEGED RCRA VIOLATIONS

#### A. RCRA Statutory and Legal Framework

9. Pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921 - 6939e, EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 271, that set forth standards and requirements applicable to generators of hazardous waste and to owners and operators of facilities that treat, store or dispose of hazardous waste (“TSDFs”).

10. In 1984, Congress enacted various RCRA amendments, including a new Section 3004(n) of RCRA, 42 U.S.C. § 6924(n), that required EPA to promulgate air emission control regulations for TSDFs. EPA has promulgated these regulations at 40 C.F.R. Part 264, Subparts AA, BB and CC (for TSDFs) and at 40 C.F.R. Part 265, Subparts AA, BB and CC (for interim status facilities).

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when EPA deems the state program to be equivalent to the federal program.

12. On May 6, 1988, EPA granted Maine authorization to implement its base hazardous waste management program. *See* 53 Fed Reg. 16264 (May 6, 1988). This authorization became effective on May 20, 1998. EPA subsequently granted authorization for changes to Maine’s program in 1997, 2004 and 2020. EPA has not authorized Maine to administer the federal Subpart AA, BB and CC regulations in 40 C.F.R. Parts 264 and 265.

13. The Maine Department of Environmental Protection administers the Maine hazardous waste program through the Maine Hazardous Waste Management Rules (“Maine HWMR”), 06–096 C.M.R Chapters 850–858, effective June 11, 2018.

14. Pursuant to Sections 3006(g) and 3008(a) of RCRA, 42 U.S.C. §§ 6926(g) and 6928(a), EPA may enforce violations of the requirements of RCRA, and the requirements of Subparts AA, BB and CC in 40 C.F.R. Parts 264 and 265 in states not authorized to administer these regulations, by issuing administrative orders to assess civil penalties and require compliance.

15. Sections 3008(a)(1) and (a)(2) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (a)(2), authorize EPA to commence administrative penalty and compliance actions to enforce the requirements of RCRA and Subparts AA, BB and CC in 40 C.F.R. Parts 264 and 265 in states not authorized to administer these regulations. Violations of these requirements that occurred after January 12, 2009, are subject to penalties up to \$37,500 per day for each violation, while violations that occur after November 2, 2015, for which penalties are assessed on or after January 13, 2020, are subject to penalties up to \$75,867.

#### **B. General Allegations**

16. Respondent Fairchild is a corporation and a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10. At all times relevant to the allegations set forth in this CAFO, Respondent has been the “owner” and “operator” of the Facility as defined in 40 C.F.R. § 260.10.

17. At all times relevant to the allegations set forth in this CAFO, the Facility has generated “hazardous wastes” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), 40 C.F.R. § 261.3, and the Chapter 850, Section 3(A)(3) of the Maine HWMR.

18. At all times relevant to the allegations set forth in this CAFO, Respondent has been a “generator” of hazardous wastes at the Facility as defined in 40 C.F.R. § 260.10 and Chapter 851, Section 3(C) of the Maine HWMR.

19. Moreover, at all times relevant to the allegations set forth in this CAFO, Respondent has been a “large quantity generator” of hazardous wastes at the Facility as defined in 40 C.F.R. § 260.10 and Chapter 851, Section 3(C)(1) of the Maine HWMR.

20. Respondent has never applied for a TSD permit for the treatment, storage or disposal of hazardous wastes at the Facility.

21. In order to temporarily store hazardous waste without obtaining a permit or complying with the operating requirements of 40 C.F.R. Part 265, Respondent’s Facility must comply with the conditions found in the applicable provisions of 40 C.F.R. § 262.17, which incorporate as conditions for exemption the requirements of the Subpart BB and CC regulations set out in 40 C.F.R. Part 265. *See* 40 C.F.R. § 262.17(a)(1)(i).

22. Accordingly, Respondent is subject to the requirements of 40 C.F.R. Part 265, Subparts BB and CC (hereinafter, “Subpart BB” or “Subpart CC”).

23. At the time of EPA’s RCRA Inspection, Respondent was accumulating mixed solvent hazardous wastes in the following tanks at the Facility:

- a. A 5,488-gallon capacity tank, identified as “Tank 10,” located in Building 26;
- b. Two lift station tanks, about 10 gallons and 5 gallons in capacity, respectively, located in Room B-241, with waste from these tanks hard-piped into Tank 10; and

c. A 30-gallon solvent transfer tank located in Room 12-30, with waste from this tank hard-piped into Tank 10.

24. The mixed solvent hazardous wastes accumulating in the four tanks listed in Paragraph 23 above contained average volatile organic concentrations equal to or greater than 500 parts per million by volume and organic concentrations of at least 10% by weight. Equipment such as pumps and valves connected to or otherwise associated with these four tanks also contained or contacted hazardous wastes with organic concentrations of at least 10% by weight.

25. Accordingly, each of the four tanks listed in Paragraph 23 above was subject to the requirements of Subpart CC, and equipment such as valves and pumps connected to or otherwise associated with the tanks was subject to the requirements of Subpart BB.

### **C. RCRA Violations**

#### **1. Failure to Comply with Subpart CC Requirements for Tanks**

26. As alleged in Paragraphs 23 through 25 of this CAFO, at the time of EPA's RCRA Inspection there were four hazardous waste tanks at the Facility containing mixed solvent hazardous wastes that were subject to the requirements of Subpart CC.

27. At the time of EPA's RCRA Inspection, the Facility's four solvent hazardous waste tanks were not in compliance with Subpart CC's requirements for hazardous waste tanks. *See* 40 C.F.R. § 265.1083(b), 40 C.F.R. § 265.1085(c), 40 C.F.R. § 265.1089(a), and 40 C.F.R. §§ 265.1090(a) - (b).

28. Accordingly, Respondent violated Subpart CC's tank requirements in 40 C.F.R. §§ 265.1083, 265.1085, and 265.1089 - 265.1090, as referenced by 40 C.F.R. § 262.17(a)(1)(i).

## 2. Failure to Mark Equipment in Subpart BB Service

29. As alleged in Paragraphs 24 and 25 of this CAFO, at the time of EPA's RCRA Inspection the Facility contained equipment such as pumps and valves connected to or otherwise associated with the Facility's four solvent hazardous waste tanks that were subject to the requirements of Subpart BB.

30. Subpart BB requires that equipment in Subpart BB service be marked in a manner to readily distinguish it from other pieces of equipment. *See* 40 C.F.R. § 265.1050(c).

31. At the time of EPA's RCRA Inspection, Facility equipment that was subject to Subpart BB requirements was not marked to readily distinguish it from other equipment not subject to Subpart BB.

32. Accordingly, Respondent violated Subpart BB at 40 C.F.R. § 265.1050(c), as referenced by 40 C.F.R. § 262.17(a)(1)(i).

## 3. Failure to Monitor Equipment in Subpart BB Service

33. Subpart BB requires that equipment such as pumps and valves subject to Subpart BB must be monitored, visually inspected, and/or tested using methods and schedules specified in Subpart BB. *See* 40 C.F.R. §§ 265.1052(a)(1), (a)(2), and/or (e), 40 C.F.R. § 265.1057(a), and 40 C.F.R. § 1058(a).

34. At the time of EPA's RCRA Inspection, Respondent's Facility equipment that was subject to Subpart BB was not being monitored, inspected and/or tested in accordance with Subpart BB requirements.

35. Accordingly, Respondent violated the equipment monitoring requirements of Subpart BB in 40 C.F.R. §§ 265.1052 - 256.1058, as referenced by 40 C.F.R. § 262.17(a)(1)(i).

#### 4. Failure to Keep Subpart BB Records

36. Subpart BB requires that facilities subject to Subpart BB must record certain Subpart BB-related information. For each piece of Subpart BB-subject equipment, the following information must be recorded: (i) an equipment identification number and hazardous waste management unit identification; (ii) the approximate location of the equipment within the facility; (iii) the type of equipment (e.g., pump or valve); (iv) the percent-by-weight total organics in the hazardous waste stream at the equipment; (v) the hazardous waste state at the equipment (e.g., gas/vapor or liquid); and (vi) the method of compliance with Subpart BB (e.g., monthly leak detection and repair). Additional records must be kept for equipment designated for no detectible emissions, and for equipment designated as unsafe or difficult to monitor. *See* 40 C.F.R. §§ 265.1064(a), (b), (g) and (k).

37. At the time of EPA's RCRA Inspection, Respondent was not keeping records required for Subpart-BB subject equipment in accordance with Subpart BB requirements.

38. Accordingly, Respondent violated the recordkeeping requirements of Subpart BB in 40 C.F.R. § 265.1064, as referenced by 40 C.F.R. § 262.17(a)(1)(i).

#### IV. GENERAL TERMS

39. The terms of this CAFO shall apply to and be binding on Complainant and on Respondent, its officers, directors, successors and assigns.

40. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction over the subject matter described in this CAFO and that the CAFO states claims upon which relief can be granted against Respondent. Respondent neither admits nor denies the factual allegations contained in Section III.C of this CAFO. Respondent waives any right to a



judicial or administrative hearing or appeal regarding this CAFO, and to otherwise contest the allegations of this CAFO or to appeal the CAFO's Final Order.

41. Respondent consents to the assessment of the civil penalty set out in Section VI below. Respondent also consents to the issuance of any compliance provisions and any conditions specified in this CAFO.

42. All notices and submissions required by this CAFO shall be sent to:

For Complainant:

Steven J. Viggiani  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code 4-3  
Boston, Massachusetts 02109-3912  
[viggiani.steven@epa.gov](mailto:viggiani.steven@epa.gov)

For Respondent:

Lisa A. Gilbreath, Esq.  
Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, Maine 04101  
[lgilbreath@pierceatwood.com](mailto:lgilbreath@pierceatwood.com)

and

Joel Pond, Esq.  
Senior Director, Business Affairs, Legal Department  
Fairchild Semiconductor Corporation  
82 Running Hill Rd.  
South Portland, ME 04106  
[joel.pond@onsemi.com](mailto:joel.pond@onsemi.com)

## V. COMPLIANCE CERTIFICATION AND COMPLIANCE ORDER

43. As of the effective date of this CAFO, Respondent certifies that the Facility is in compliance with the applicable provisions of the Subpart BB and Subpart CC regulations cited in Section III above.

44. Respondent certifies that it has completed the following RCRA compliance actions at the Facility:

- a. Respondent has ceased operation and dismantled the solvent hazardous waste-containing Tank No. 10 that was located in Facility Building 26;
- b. Respondent has implemented a Subpart CC compliance program as required by applicable Subpart CC regulations at the Facility;
- c. Respondent has complied with all applicable Subpart CC requirements for the Facility's 10-gallon and 5-gallon lift station tanks located in Room B-241 and the 30-gallon solvent transfer tank located in Room 12-30;
- d. Respondent has implemented a Subpart BB compliance program as required by applicable Subpart BB regulations at the Facility; and
- e. Respondent has complied with all applicable Subpart BB requirements for all equipment subject to Subpart BB at the Facility, including all Subpart BB labeling, monitoring and recordkeeping requirements. Respondent may, at its own option, use a calibration gas consisting of a mixture of methane, n-hexane, or isobutylene and air at a concentration less than 10,000 ppm methane, n-hexane, or isobutylene provided that Respondent documents that this calibration gas level provides analytical results so as

to accurately determine whether a leak has been detected at all Subpart BB leak levels measured at the Facility, and that Respondent uses no Subpart BB leak detection thresholds greater than this calibration gas level.

45. Respondent agrees that it shall maintain compliance with all applicable requirements of Subpart CC for the three solvent hazardous waste storage tanks currently at the Facility as described in Paragraph 44 above, and for any other hazardous waste storage tanks that are or that may become subject to Subpart CC at the Facility. Respondent also agrees that it shall maintain compliance with all applicable requirements of Subpart BB for all equipment that is or that may become subject to Subpart BB at the Facility.

#### VI. CIVIL PENALTY

46. Respondent shall pay a civil penalty of \$104,545. EPA Region 1 has determined, consistent with statutory penalty criteria and applicable policies, that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors.

47. To pay the penalty, Respondent shall submit, no later than 30 days after the effective date of this CAFO, a cashier's or certified check in the amount of \$104,545, payable to the order of the "Treasurer, United States of America." The check shall be sent via regular mail to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

In the alternative, Respondent may pay the penalty via electronic wire funds transfer using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

Respondent shall include the case name and docket number (“In the Matter of Fairchild Semiconductor Corporation, Docket No. RCRA-01-2021-0007”) on the face of the check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send a notice of the penalty payment and a copy of the check or wire transfer confirmation to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code 4-6  
Boston, Massachusetts 02109-3912  
[santiago.wanda@epa.gov](mailto:santiago.wanda@epa.gov)

and

Steven J. Viggiani  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code 4-3  
Boston, Massachusetts 02109-3912  
[viggiani.steven@epa.gov](mailto:viggiani.steven@epa.gov)

48. If Respondent fails to pay the full amount of the civil penalty by its due date, Respondent shall pay interest on the late amount pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

49. All payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and 26 C.F.R. § 1.162-21, and Respondent shall not use these payments in any way as, or in furtherance of, a tax deduction under federal law.

## **VII. EFFECT OF SETTLEMENT**

50. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for the alleged violations set out in Section III.C of this CAFO.

51. Nothing in this CAFO shall be construed to limit the authority of EPA or the United States to undertake any action against Respondent for criminal activity, or to respond to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. EPA reserves all rights and remedies available to it to enforce the provisions of this CAFO, RCRA and its implementing regulations and permits, and any other federal, state or local law or regulation.

52. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal or state law, and shall not be construed to be a ruling or determination regarding any issue related to any federal, state or local permit. Except as provided in Paragraph 50 above, compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to environmental laws and regulations administered by EPA.

53. Each Party shall bear its own costs, disbursements and attorneys fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other Party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

54. The Parties' undersigned representatives certify that they are fully authorized by their respective Party to enter into the terms and conditions of this CAFO and to execute and legally bind their Party to it. Each Party consents to the use of digital signatures on this CAFO, and Respondent further consents to receipt of service of the CAFO, once filed, by electronic mail.

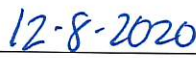
55. The terms, conditions and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

56. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

In the Matter of Fairchild Semiconductor Corporation, Docket No. RCRA-01-2021-0007  
Consent Agreement and Final Order

FOR RESPONDENT:

  
\_\_\_\_\_  
Lauren Bellerjeau  
Assistant Secretary  
Fairchild Semiconductor Corporation

  
\_\_\_\_\_  
Date

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FOR COMPLAINANT:

\_\_\_\_\_  
Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 1

\_\_\_\_\_  
Date



**FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent Fairchild Semiconductor Corporation is ordered comply with the terms of this CAFO and to pay the civil penalty amount specified in the manner indicated therein. The terms of the Consent Agreement shall become effective on the date that the CAFO is filed with the Regional Hearing Clerk.

\_\_\_\_\_  
Sharon Wells  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

\_\_\_\_\_  
Date