UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

# U. S. ENVIRONMENTAL PROTECTION AGENCY REGION 7 2019 FEB 12 PM 3: 40

## 11201 RENNER BOULEVARD LENEXA, KANSAS 66219 BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Diodes Incorporated	)	Docket No. CAA-07-2018-0304
	)	
Respondent.	)	

## **CONSENT AGREEMENT AND FINAL ORDER**

### **Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Diodes Incorporated (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

#### Jurisdiction

- 1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.
- 2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated the General Duty Clause set forth in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) and the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to assess penalties for these alleged violations.

#### **Parties**

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent is Diodes Incorporated, a corporation in good standing under the laws of the state of Delaware and was doing business in the state of Missouri at relevant times herein, which leased and operated the facility located at 777 NW Blue Parkway, Lee's Summit, Missouri 64086 (the Facility). Respondent's Facility has ceased all operations.

## Statutory and Regulatory Background

- 5. On November 15, 1990, the President signed into law the CAA Amendments of 1990, which added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The stated objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.
- 6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the General Duty Clause, the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq., to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.
- 7. Pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), the EPA promulgated a list of substances, which in the case of an accidental release, are known to cause or may reasonable be anticipated to cause death, injury, or serious adverse effects to human health or the environment. This list is codified at 40 C.F.R. § 68.130.
- 8. Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of the regulated substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3).
- 9. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.
- 10. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.
- 11. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no

later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

- 12. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements of Program 1, as described in 40 C.F.R. § 68.10(b), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.
- 13. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$46,192 for violations that occur after November 2, 2015, and are assessed after January 15, 2018.

#### **Definitions**

- 14. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.
- 15. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
- 16. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define "stationary source," in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.
- 17. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.
- 18. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

19. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

## **General Factual Allegations**

- 20. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
  - 21. Respondent was, at all times referred to herein, the operator of the Facility.
- 22. The Facility was, at all times referred to herein, a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.
- 23. On or about May 15 17, 2017, the EPA conducted an inspection of the Facility to determine Respondent's compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68 (the EPA inspection).
- 24. The following substances are extremely hazardous substances and/or regulated substances (herein the Extremely Hazardous Substances):
  - a. Anhydrous Ammonia;
  - b. Chlorine;
  - c. Diborane;
  - d. Dichlorosilane;
  - e. Hydrofluoric Acid;
  - f. Hydrogen;
  - g. Hydrogen Chloride: Hydrochloric Acid and Anhydrous Hydrogen Chloride;
  - h. Nitric Acid:
  - i. Phosphine;
  - j. Phosphorus Oxychloride;
  - k. Silane; and
  - l. Trichlorosilane.

- 25. Information gathered during the EPA inspection revealed that the Respondent processed, handled, and/or stored the Extremely Hazardous Substances at the Facility.
- 26. Anhydrous hydrogen chloride is a regulated substance, as defined by 40 C.F.R. § 68.3.
- 27. The threshold quantity for anhydrous hydrogen chloride, as listed in 40 C.F.R. § 68.130, is 5,000 pounds.
- 28. Information gathered during the EPA inspection revealed that in 2014 and 2015, Respondent had greater than 5,000 pounds of anhydrous hydrogen chloride in a process at the Facility.
- 29. From the time Respondent first had onsite greater than 5,000 pounds of anhydrous hydrogen chloride in a process, Complainant alleges that Respondent was subject to Program 3 prevention program requirements because pursuant to 40 C.F.R. § 68.10(d), the covered process at its facility did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.
- 30. From the time Respondent first had onsite greater than 5,000 pounds of anhydrous hydrogen chloride in a process, Complainant alleges that Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d).
- 31. Complainant alleges that Respondent was subject to the requirements of 40 C.F.R. Part 68, pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), because it was an operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.
- 32. From the time Respondent first had onsite any of the Extremely Hazardous Substances at the Facility, Complainant alleges that Respondent was subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it was the operator of a stationary source that was producing, processing, handling or storing extremely hazardous substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3).

## **Allegations of Violation**

33. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

#### Count 1

- 34. The facts stated in Paragraphs 19 through 32 above are herein incorporated.
- 35. The regulation at 40 C.F.R. § 68.12(d) requires that the owner or operator of a stationary source with a process subject to Program 3 shall submit a single RMP, develop a

management plan, conduct a hazard assessment, implement the Program 3 prevention requirements, develop and implement an emergency response program, and submit as part of the RMP the data on prevention program elements for the Program 3 processes.

- 36. Information gathered as a result of the EPA inspection revealed that Respondent was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.199, and in 2014 and 2015 Respondent had more than a threshold quantity of anhydrous hydrogen chloride in a process at the Facility. Information gathered as a result of the inspection revealed that Respondent failed to implement a risk management program by failing to submit an RMP, develop a management plan, conduct a hazard assessment, implement the Program 3 prevention requirements, develop and implement an emergency response program, and submit as part of the RMP the data on prevention program elements for the Program 3 processes.
- 37. Complainant alleges Respondent's failure to implement a Program 3 risk management program, as required by 40 C.F.R. § 68.12(d), violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

#### Count 2

- 38. The facts stated in Paragraphs 19 through 32 above are herein incorporated.
- 39. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq., inter alia to identify hazards which may result from accidental releases using appropriate hazard assessment techniques.
- 40. At the time of the inspection, Complainant alleges Respondent was unable to demonstrate it had taken any steps to identify hazards for all but one chemical. For example, Respondent was unable to provide any hazard identification information for the Extremely Hazardous Substances, except for trichlorosilane; develop release scenarios for any of the regulated substances, except for trichlorosilane; or identify population and environmental receptors that would be impacted from a release of any of the Extremely Hazardous Substances. As a result, Complainant alleges Respondent failed to meet its general duty to identify hazards which may result from accidental releases using appropriate hazard assessment techniques.
- 41. Complainant alleges Respondent's failure to meet its general duty to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, violates Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

#### Count 3

- 42. The facts stated in Paragraphs 19 through 32 above are herein incorporated.
- 43. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and

operators of stationary sources producing, processing, handling, or storing any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq., inter alia to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

- 44. Complainant alleges that, at the time of the inspection, the Facility lacked certain safety elements. Specifically, Respondent had not identified nor implemented any design codes and standards for the Facility, had not defined upper and lower operating limits, had not conducted self-audits, had not evaluated procedures for temporary operations, and had not adequately designed the Facility to minimize the risk of exposure from the regulated substances to other tenants located in the same building as the Facility. As a result, Respondent failed to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.
- 45. Complainant alleges Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, violates Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

#### Count 4

- 46. The facts stated in Paragraphs 19 through 32 above are herein incorporated.
- 47. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq., inter alia to minimize the consequences of accidental releases which do occur.
- 48. At the time of the inspection, Complainant alleges that Respondent did not have procedures for informing the public and other tenants located in the same building as the Facility of a release, did not have procedures for first aid, had not conducted any emergency response coordination with other building tenants or management, and had not kept the contacts in the emergency response plan that was shared with local responders up-to-date. As a result, Respondent failed to meet its general duty to minimize the consequences of accidental releases which do occur.
- 49. Complainant alleges Respondent's failure to meet its general duty to minimize the consequences of accidental releases which do occur, violates Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

#### **CONSENT AGREEMENT**

- 50. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - (a) admits the jurisdictional allegations set forth herein;
  - (b) neither admits nor denies the specific factual allegations stated herein;
  - (c) consents to the assessment of a civil penalty, as stated herein;
  - (d) acknowledges the issuance of any specified compliance or corrective action order is not applicable, as the Facility is now closed for operations;
  - (e) consents to any conditions specified herein;
  - (f) waives any right to contest the allegations set forth herein; and
  - (g) waives its rights to appeal the Final Order accompanying this Consent Agreement.
- 51. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.
- 52. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

#### **Penalty Payment**

- 53. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Two Hundred Twenty-Nine Thousand Four Hundred Fifty-Six Dollars (\$229,456), as set forth below.
- 54. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at http://www.epa.gov/financial/makepayment.

55. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk U.S. Environmental Protection Agency, Region 7 11201 Renner Boulevard Lenexa, Kansas 66219; and

Clarissa Howley Mills, Attorney Office of Regional Counsel U.S. Environmental Protection Agency, Region 7 11201 Renner Boulevard Lenexa, Kansas 66219.

56. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

## Effect of Settlement and Reservation of Rights

- 57. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.
- 58. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.
- 59. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations at the Facility, which is now closed for operations.
- 60. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

61. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

- 62. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.
- 63. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
- 64. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.
- 65. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent at the Facility with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

## RESPONDENT: DIODES INCORPORATED

Date: 2-1-19	Buchard D White	
	Signature	
	RICHARD D. WHITE	
	Name	
	CFO	
	Title	

## COMPLAINANT: U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/8/19

Mark A. Smith

Acting Director, Air and Waste Management Division U.S. Environmental Protection Agency, Region 7

Date: 02 11 2019

Clarissa Howey Mills

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region 7

## **FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Regional Judicial Officer

Feb. 12,2019 Date

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## **CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

mills.clarissa@epa.gov

and

Copy via Email to Respondent's attorney:

jmcclelland@armstrongteasdale.com

Dated this 2 day of February, 2019.

Signed