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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. EPCRA-09-2008-0032
11)
12 Cypress Semiconductor Corp.) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX ("EPA"), and Cypress
17 Semiconductor Corporation (the "Respondent") agree to settle this matter and consent to the
18 entry of this Consent Agreement and Final Order ("CAFO").
19

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative action brought under Section 325(c) of the Emergency
22 Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for
23 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
24 complete and correct Toxic Chemical Release Inventory Forms for calendar years 2004 and 2005
25 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations set
26 forth at 40 C.F.R. Part 372.

27 2. Complainant is the Director of the Communities and Ecosystems Division in EPA,
28 Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May
11, 1994, the Administrator of EPA has delegated the authority to file this action under EPCRA

1 to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number
2 R1260.14B, dated May 19, 2005, the Regional Administrator re-delegated that authority to
3 Complainant.

4 B. STATUTORY AND REGULATORY BASIS

5 3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
6 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
7 the submission of information relating to the release of toxic chemicals under EPCRA Section
8 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

9 4. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
10 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
11 the State in which the facility is located a chemical release form published under Section 313(g)
12 of EPCRA for each toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R.
13 § 372.65 that it manufactured, processed or otherwise used if: (i) the facility has ten or more full-
14 time employees; (ii) the facility is in North American Industry Classification System Code
15 33441303; and (iii) the facility manufactured, processed or otherwise used during the calendar
16 year the listed toxic chemical in excess of the threshold quantity established under Section 313(f)
17 of EPCRA and 40 C.F.R. § 372.25.

18 5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
19 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for
20 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
21 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
22 activities involving a toxic chemical that occurred during a calendar year must be submitted on or
23 before July 1 of the next year.

24 C. ALLEGED VIOLATIONS

25 6. Respondent is a corporation and therefore fits within the definition of a "person," as
26 provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

27 7. At all times relevant to this matter, Respondent owned and operated a facility (the
28 "Facility") in the business of research semiconductor fabrication, located at 3901 North 1st Street

1 in San Jose, California, that fits within the definition of a “facility,” as provided in Section
2 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3 8. At all times relevant to this matter, the Facility had 10 or more “full-time employees,”
4 as that term is defined at 40 C.F.R. § 372.3.

5 9. At all times relevant to this matter, the Facility was in North American Industry
6 Classification System Code 33441303.

7 10. During the calendar year 2004, Respondent “otherwise used,” as that term is defined
8 in 40 C.F.R. § 372.3, approximately 17,125 pounds of hydrogen fluoride, a toxic chemical listed
9 under 40 C.F.R. § 372.65. This quantity exceeded the 10,000 pound threshold for reporting
10 “otherwise using” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C.
11 § 11023(f), and 40 C.F.R. § 372.25.

12 11. During the calendar year 2005, Respondent “otherwise used,” as that term is defined
13 in 40 C.F.R. § 372.3, approximately 18,464 pounds of hydrogen fluoride, a toxic chemical listed
14 under 40 C.F.R. § 372.65. This quantity exceeded the 10,000 pound threshold for reporting
15 “otherwise using” of that chemical established under Section 313(f) of EPCRA, 42 U.S.C.
16 § 11023(f), and 40 C.F.R. § 372.25.

17 12. Respondent was required to submit a Form R for hydrogen fluoride to EPA and the
18 State of California for calendar year 2004 on or before July 1, 2005.

19 13. Respondent was required to submit a Form R for hydrogen fluoride to EPA and the
20 State of California for calendar year 2005 on or before July 1, 2006.

21 14. Respondent failed to timely submit the Form Rs required of it to EPA and the State
22 of California for calendar years 2004 and 2005, and thus violated Section 313 of EPCRA, 42
23 U.S.C. § 11023, and 40 C.F.R. Part 372.

24 15. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Civil Monetary Penalty
25 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any person who violates any
26 requirement of Section 313 shall be liable to the United States for a civil penalty in an amount
27 not to exceed \$32,500 for each such violation that occurred on or after March 15, 2004. Under
28 the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, the Civil

1 Monetary Penalty Inflation Adjustment Rule, and EPA's Policy on *Incentives for Self-Policing:*
2 *Discovery, Disclosure, Correction and Prevention of Violations*, 65 Federal Register 19618
3 (April 11, 2000), the 2004 violation cited above would merit a gravity-based civil penalty of
4 ZERO DOLLARS (\$0) and the 2005 violation cited above would merit an adjusted gravity-based
5 civil penalty of TEN THOUSAND AND NINE HUNDRED DOLLARS (\$10,900), given the
6 nature, circumstances, and extent of the violations alleged.

7 D. RESPONDENT'S ADMISSIONS

8 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
9 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
10 Respondent; (ii) admits the specific factual allegations contained in Section I.C of this CAFO;
11 (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil
12 administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the
13 allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order
14 contained in this CAFO.

15 E. CIVIL ADMINISTRATIVE PENALTY

16 17. In settlement of the violations specifically alleged in Section I.C of this CAFO,
17 Respondent shall pay a civil administrative penalty of TEN THOUSAND AND NINE
18 HUNDRED DOLLARS (\$10,900). Respondent shall pay this civil penalty within thirty (30)
19 days of the effective date of this CAFO, shall make this payment by cashier's or certified check
20 payable to the "Treasurer, United States of America," and shall send the check to the following
21 address:

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

27 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
28 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,
Respondent shall send a copy of the check and transmittal letter to the following addresses:

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

Mariela Lopez
Communities and Ecosystems Division (CED-4)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Edgar Coral
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

18. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

19. If Respondent fails to pay the assessed civil administrative penalty of TEN THOUSAND AND NINE HUNDRED DOLLARS (\$10,900), as identified in Paragraph 17, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The amount of the stipulated penalty will be TEN THOUSAND AND NINE HUNDRED DOLLARS (\$10,900), and will be immediately due and payable on the day following the deadline specified in Paragraph 17, together with the initially assessed civil administrative penalty of TEN THOUSAND AND NINE HUNDRED DOLLARS (\$10,900), resulting in a total penalty due of TWENTY-ONE THOUSAND AND EIGHT HUNDRED DOLLARS (\$21,800). Failure to pay the civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph may also lead to any or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such collection proceeding.

(2) The U.S. Government may collect the debt by administrative offset

1 (i.e., the withholding of money payable by the United States to, or held by the United States for, a
2 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
3 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
4 C.F.R. §§ 13(C) and 13(H).

5 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
6 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
7 business with EPA or engaging in programs EPA sponsors or funds.

8 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
9 Government may assess interest, administrative handling charges, and nonpayment penalties
10 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
11 civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph.

12 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
13 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
14 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
15 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
16 (30) days of the effective date of this CAFO.

17 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
18 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
19 based on either actual or average cost incurred (including both direct and indirect costs), for
20 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

21 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
22 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
23 may be assessed on all debts more than ninety (90) days delinquent.

24 F. CERTIFICATION OF COMPLIANCE

25 20. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
26 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
27 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder;
28 and (2) it has complied with all other EPCRA requirements at all facilities under its control.

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G. RETENTION OF RIGHTS

21. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

22. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

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

J. BINDING EFFECT

25. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

26. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

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FOR RESPONDENT CYPRESS SEMICONDUCTOR CORPORATION:

9/19/2008
DATE


MINH PHAM
Fab Operations, Vice President
Cypress Semiconductor Corporation
2401 E. 86th Street
Bloomington, MN 55425

FOR COMPLAINANT EPA:

SEPT. 29, 2008
DATE

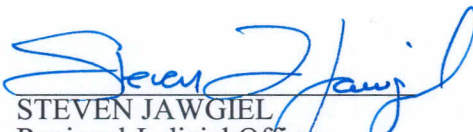

ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Cypress Semiconductor Corporation having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2008-0032) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of TEN
6 THOUSAND AND NINE HUNDRED DOLLARS (\$10,900), and comply with the terms and
7 conditions set forth in the Consent Agreement.

9
10 09/30/08
11 DATE

12 
13 STEVEN JAWGIEL
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-9-2008-00 ⁰⁰³²) against Cypress Semiconductor Corp., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Minh Pham
Fab Operations, Vice President
Cypress Semiconductor Corp
2401 E. 86th Street
Bloomington, MN 55425

Certified Mail No. 7007 3020 0000 9806 8439

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX

Date *10/02/08*