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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)
)
Fairchild Semiconductor Corporation)
Respondent.)
)
Proceeding Under Section 122(h)(1))
of the Comprehensive Environmental)
Response, Compensation and Liability)
Act of 1980 (42 U.S.C. § 9622(h)(1)))
as amended by the Superfund)
Amendments and Reauthorization)
Act of 1986)
_____)

ADMINISTRATIVE CONSENT
ORDER

93-07

This Order is issued by the United States Environmental Protection Agency ("EPA") and is agreed to by Fairchild Semiconductor Corporation ("Respondent"). The purpose of this Order is for EPA to recover response costs incurred and response costs to be incurred by the United States at or in connection with the Fairchild Semiconductor Corporation Site ("Site") in San Jose, California and to resolve the liability of the Respondent for such response costs.

EPA is authorized to enter into this Order pursuant to the authority vested in the Administrator of the EPA by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Sept. 13, 1987), and redelegated to the Director, Hazardous Waste Management Division, EPA Region IX.

WHEREAS, EPA alleges that hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are present at the Site and that such hazardous substances have been or are threatened to be released into the environment from the Site;

WHEREAS, EPA alleges that the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

WHEREAS, EPA alleges that such releases or threatened releases required response action to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will require further response action to be undertaken in the future;

WHEREAS, EPA alleges that in performing this response action, it has incurred response costs at or in connection with the Site totalling \$324,677.16 as of July 31, 1991, and that further response costs will be incurred in the future;

WHEREAS, EPA alleges that the Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred and to be incurred at or in connection with the Site; and

WHEREAS, EPA and the Respondent desire to settle certain claims arising from the Respondent's alleged involvement with the Site without litigation and without the admission or adjudication of any issue of fact or law;

NOW, THEREFORE, in consideration of the promises herein, and intending to be legally bound hereby, it is ordered and agreed as follows:

1. This Order shall be binding upon EPA and shall be binding upon the Respondent and its successors and assigns. Each signatory to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Order and to bind legally the party represented by him or her. The Respondent agrees to undertake all actions required by this Order. The Respondent consents to the issuance of this Order and will not contest EPA's authority to enter into this Order or to implement or enforce its terms.

2. The Respondent agrees to pay to the Hazardous Substance Superfund \$291,930.73, within fifteen days of the effective date of this Order.

3. The Respondent's payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name and address of the Respondent, the site name and identification number, and the EPA docket number for this action and shall be sent by the Respondent to:

EPA Region IX
ATTN: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

4. The Respondent shall simultaneously send a copy of its check to:

James C. Hanson
Mail Code H-6-3
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

5. In addition to any other remedies or sanctions available to EPA, if Respondent fails or refuses to comply with any term or condition of this Order, Respondent shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3), and to civil penalties pursuant to Sections 122(l) and 109 of CERCLA, 42 U.S.C. §§ 9622(l) and 9609.

6. Respondent agrees to pay the United States' future response costs incurred at or in connection with the Site, including response costs incurred from and after July 31, 1991. EPA shall provide a cost summary of its response costs annually to Respondent. Upon request, EPA will provide Respondent with reasonable documentation evidencing such expenditures. Respondent reserves the right to demonstrate that EPA's cost summary contains accounting errors or costs that are inconsistent with the National Contingency Plan. The Respondent shall reimburse EPA for all undisputed response costs within thirty days from receipt of EPA's annual cost summary, in accordance with the procedures set forth in Sections 3 and 4 of this Order.

7. Subject to Section 10 of this Order, upon payment of the amount specified in Section 2 of this Order, EPA agrees that the Respondent shall have resolved any and all civil liability to EPA under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of response costs incurred at or in connection with the Site as of July 31, 1991. The Respondent shall also have resolved any and all civil liability to EPA under Section 107(a) of CERCLA for reimbursement of future response costs paid by the Respondent under Section 6 above.

8. A cost shall be deemed to have been "incurred" for purposes of Sections 6 and 7 as of the date it is paid by EPA, or, if applicable, as of the date it is paid by the agency or entity administering CERCLA funds granted by EPA. If a cost was paid prior to July 31, 1991 but was not yet recorded against the relevant site-specific account number in EPA's accounting system, or, if applicable, in the grantee agency's or entity's accounting system, the cost shall not be considered to have been incurred as of the July 31, 1991 cutoff date set forth in Sections 6 and 7, and shall be deemed to be a "future response cost" which Respondent shall reimburse in accordance with Section 6.

9. Nothing in this Order is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any

claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against the Respondent for:

a) any liability as a result of failure to make the payments required by Sections 2 and 6 of this Order or other failure to comply with terms of this Order; or

b) any liability not expressly included in Section 7 above, including, without limitation any liability for i) injunctive relief at the Site; ii) response costs other than those specifically described under Sections 2 and 6 above; iii) damages for injury to or loss or destruction of natural resources; or iv) criminal liability.

10. Nothing in this Order is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Order.

11. The Respondent agrees not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of response activities undertaken at, or relating in any way to, the Site, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of response activities undertaken at, or relating in any way to, the Site. The Respondent waives any right it might have to seek reimbursement from EPA pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for any costs pertaining to the Site.

12. With regard to claims for contribution against the Respondent for matters addressed in this Order, the parties hereto agree that the Respondent is entitled, as of the effective date of this Order, to such protection from contribution actions or claims as is provided in Section 122(h)(4) of CERCLA.

13. This Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA. In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Order if comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate.

14. The effective date of this Order shall be the date upon which EPA issues written notice to the Respondent that the public comment period pursuant to Section 14 of this Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Order.

15. By signing this Order and taking action under this Order, the Respondent does not necessarily agree with EPA's recitals herein. Furthermore, the participation of the Respondent in signing this Order and taking action under this Order shall not be considered an admission of liability by Respondent and is not admissible in evidence against the Respondent in any judicial or administrative proceeding other than a proceeding by the United States to enforce this Order as set forth herein.

16. By signing this Order and taking action under this Order, the Respondent reserves all rights and defenses it may have to oppose and defend against any claims and actions and to assert any claims it may have against or by any person, firm, corporation or other entity not a signatory to this Order.

IT IS SO AGREED:

Fairchild Semiconductor Corporation

Dec 17, 1992
Date

By Its Representative :

C. Robert Bostic

C. Robert Bostic
Director, Environmental Programs
Schlumberger Technology Corporation

The above being agreed and consented to, IT IS SO ORDERED

this 8th day of February, 1992. 3 JE

U.S. Environmental Protection Agency

By:

Jeff Zelikson

Jeff Zelikson, Director
Hazardous Waste Management Division
Region IX