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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS
HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

3M COMPANY

RESPONDENT

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Consent Agreement and Final Order
USEPA Docket No. RCRA-06-2021-0922

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is entered into by the United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant") and Respondent, 3M Company ("Respondent" or "3M Brownwood") and concerns the facility located at 4501 Highway 377 South, Brownwood, TX 76801 ("Facility").
2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(2)¹.
3. For the purpose of this CAFO, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO. This CAFO states a claim upon which relief may be granted.

¹ On December 26, 1984, the State of Texas received final authorization for its base Hazardous Waste Management Program (49 FR 48300). Subsequent revisions have been made to the Texas Hazardous Waste Program and authorized by the EPA. Except as otherwise provided, all citations found within this order are to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" dated December 2015, incorporated by reference under 40 C.F.R. § 272.2201(c)(1)(i) effective on April 10, 2020. 85 Fed. Reg. 20190 (April 10, 2020); 40 C.F.R. 272.2201: Texas State-Administered Program: Final Authorization. References and citations to the "EPA-Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program" may vary slightly from the State of Texas' published version. The corresponding C.F.R. citations are also provided.

3M Company
RCRA-06-2021-0922

4. Respondent waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO and waives all defenses which have been raised or could have been raised to the claims in the CAFO.
5. The CAFO resolves only those violations which are alleged herein.
6. Respondent consents to the issuance of this CAFO as the most appropriate means of settling EPA's allegations without any adjudication of issues of law or fact, consents to the assessment and payment of the civil penalty in the amount and by the method set out in this CAFO, and consents to the compliance order in this CAFO.
7. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA:

Pittman.lawrence@epa.gov

To Respondent:

Respondent Email Address - Kpodpeskar@envirolawgroup.com

II. JURISDICTION

8. This CAFO is issued by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b), and 22.18(b)(2) and (3).
9. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by EPA or the United States to enforce the terms of this CAFO,

3M Company
RCRA-06-2021-0922

Respondent agrees not to contest the authority or jurisdiction of EPA to issue or enforce this CAFO and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Respondent is a corporation authorized to do business in the State of Texas.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 30 Texas Admin. Code § 3.2(25), [40 C.F.R. § 260.10].
12. Respondent owns and operates the Facility.
13. The Facility is a manufacturer of reflective coatings.
14. The Facility is assigned the EPA ID Number TXD001806868.
15. The Facility is a "facility" within the meaning of 30 Texas Admin. Code § 335.1(60) [40 C.F.R. § 260.10].
16. During the week of December 2 to December 6, 2019, EPA conducted an unannounced inspection of 3M's compliance with RCRA reviewing the Facility's records and activities as a generator of hazardous waste in the State of Texas.
17. On November 9, 2020, the EPA sent Respondent a Notification of Potential Violations Opportunity to Confer letter and began discussions with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.
18. Respondent generates hazardous waste streams in quantities that exceeds the threshold amount of 1000 kilograms of non-acute hazardous waste, corresponding to Large Quantity Generator (LQG) status under 30 Texas Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. Part 262].
19. Respondent is a "generator" of "hazardous waste" as those terms are defined in 30 Texas Admin. Code §§ 335.1(66) & (70) [40 C.F.R. § 260.10].

3M Company
RCRA-06-2021-0922

20. Respondent is classified as a Large Quantity Generator of hazardous waste in the State of Texas as defined in 30 Texas Admin. Code § 335.471(8), [40 C.F.R. § 260.10].

21. As a generator of hazardous waste, Respondent is subject to Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations set forth in 30 Texas Admin. Code Chapter 335, Subchapter C, [40 C.F.R. Part 262].

22. As a generator who treats, stores, or disposes of hazardous waste, Respondent is subject to Section 3004 of RCRA, 42 U.S.C. § 6924, and the regulations set forth in 30 Texas Admin. Code Chapter 335, Subchapter E, [40 C.F.R. Part 264].

IV. VIOLATIONS

Claim. 1 Failure to close and maintain proper storage of hazardous waste containers

23. The allegations in Paragraphs 1-22 are re-alleged and incorporated herein by reference.

24. Pursuant to 30 Texas Admin. Code § 335.112(a)(8), [40 C.F.R. 265.173(a)], a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

25. Pursuant to 40 C.F.R. 265.173(b) (2006), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.112(a)(8), a container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

26. During the December 2019 inspection, EPA inspectors identified three containers which were not closed. Respondent was not adding or removing hazardous waste from the identified containers.

3M Company
RCRA-06-2021-0922

27. During the inspection EPA inspected the Central less than 90-day Container Accumulation Area.

EPA found full hazardous waste containers on pallets stacked 3 high, one drum leaning into another, not taped together prior to being stored in the unit.

28. Per 3M's SOP, the purpose of the taping or strapping procedure of the waste containers is to stabilize the containers on the pallets. Storing the containers in unstable conditions may cause a drum to fall off the pallet and rupture.

29. 3M stored the hazardous waste containers on pallets in an unstable condition.

30. EPA finds that at the time of the Inspection conducted by EPA as referenced in Paragraph 16 Respondent failed to close three containers of hazardous waste and Respondent failed to maintain proper storage of 55-gallon containers in the Central less than 90-day Accumulation Area, in violation of 30 Texas Admin. Code §§ 335.112(a)(8), incorporated by reference 40 C.F.R. §§ 265.173(a) & (b).

Claim 2. Failure to Label a Hazardous Waste Container with an Accumulation Date and a Label indicating Hazardous Waste

31. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.

32. Pursuant to 40 C.F.R. § 262.34(a)(2) (1996), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.69(a)(2), a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

33. Pursuant to 40 C.F.R. § 262.34(a)(3) (1996), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.69(a)(3), a generator may accumulate

hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste".

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34. During the December 2019 Inspection, EPA inspectors identified one container in the Maker 34/36 area that was being used for the accumulation of hazardous waste but was not labeled as hazardous waste.
35. During the inspection EPA inspectors identified one less than 90-day hazardous storage container of barium contaminated waste which was not marked with the waste's accumulation start date.
36. EPA finds that at the time of the Inspection conducted by EPA as referenced in Paragraph 16 Respondent failed to properly label a container of barium contaminated waste with the waste's accumulation start date and Respondent failed to label a container in the Maker 34/36 area being used for the accumulation of hazardous waste as "Hazardous Waste", in violation of Section 30 Texas Admin. Code §§ 335.69(a)(2) & (a)(3), incorporated by reference 40 C.F.R. §§ 262.34(a)(2) & (a)(3).

Claim 3. Failure to Secure a Closure Device in the Closed Position for Tanks 8, 9, and 10

37. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
38. Pursuant to 40 C.F.R. § 265.1085(c)(3) (2006), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.112(a)(21), Owners and Operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall ensure whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position.

39. During the December 2019 Inspection, EPA inspectors found that manway hatches on the three vertical spent solvent tanks (Tanks 8, 9, and 10) in the solvent recovery unit tank farm were not secured and were an emissions source of volatile organic compounds to the atmosphere.

40. EPA finds that at time of the Inspection conducted by EPA as referenced in Paragraph 16 Respondent failed to secure the manway hatches, on the three vertical spent solvent tanks (Tanks 8, 9, and 10) in the solvent recovery unit tank farm, in the closed position, in violation of 30 Texas Admin. Code § 335.112(a)(21), incorporated by reference 40 C.F.R. § 265.1085(c)(3).

Claim 4. Failure to Control Air Pollutant Emissions from Tanks 8, 9, and 10

41. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.

42. Pursuant to 40 C.F.R. § 265.1085(c)(3)(ii) (2006), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.112(a)(21), Owners and Operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall ensure whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

43. During the December 2019 Inspection, EPA inspectors found the conservation vents on tanks 8, 9, and 10 were set to 0.5 ounces per square inch and when monitored using Method 21 had

readings of 1,441ppm, 618ppm, and 18,000ppm respectively above background. The tanks were under normal operating conditions and the conservation vents in the closed position were emitting above the threshold of no detectable emissions (500ppm above background) according to applicable regulations the conservation vents should have been in the closed position with no detectable emissions (500ppm above background).

44. EPA finds that at the time of the Inspection conducted by EPA as referenced in Paragraph 16 Respondent failed to control air pollutant emissions from the manway hatches on the three vertical spent solvent tanks (Tanks 8, 9, and 10), as the setting set for conservations vents did not ensure the devices remained in the closed position whenever the tank internal pressure was within the internal pressure operating range, in violation of 30 Texas Admin. Code § 335.112(a)(21), incorporated by reference 40 C.F.R. § 265.1085(c)(3)(ii).

Claim 5. Failure to complete inspection of fixed roofs of Tanks 8, 9, and 10

45. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
46. Pursuant to 40 C.F.R. § 265.1089(b) (2006), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.112(a)(21), "The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 C.F.R. 265.15."
47. During the December 2019 Inspection, EPA inspectors found corrosion on the roofs of the vertical hazardous waste storage tanks (Tanks 8, 9, and 10).
48. Corrosion was not documented in any of the tank inspection logs EPA reviewed.

49. EPA finds that at time of the Inspection conducted by EPA as referenced in Paragraph 16 Respondent failed to implement a written plan and schedule to perform the inspections and monitoring required for the fixed roofs of the vertical hazardous waste storage tanks (Tanks 8, 9, and 10) in violation of 30 Texas Admin. Code § 335.112(a)(21), incorporated by reference 40 C.F.R. § 265.1089(b).

Claim 6. Failure to make Hazardous Waste Determinations

50. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
51. Pursuant to 40 C.F.R. § 262.11 (2013), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.62, a person who generates a solid waste must determine if that waste is a hazardous waste pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of this chapter (relating to Waste Classification). "If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 267, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste."
52. During the December 2019 Inspection, EPA inspectors found three (3) hazardous waste profiles that improperly excluded the F003 and F005 waste codes. Post Inspection, Respondent provided additional information about the hazardous waste determinations and concluded that three (3) waste streams shipped during 2019 were improperly determined by the exclusion of F003 and F005 waste codes.
53. EPA finds that at the time of the Inspection conducted by EPA as referenced in Paragraph 16 Respondent failed to make hazardous waste determinations for three (3) hazardous waste streams

shipped during 2019 which should have included the F003 and F005 waste codes in violation of 30 Texas Admin. Code § 335.62, incorporated by reference 40 C.F.R. § 262.11.

Claim 7. Failure to meet Large Quantity Generator Requirements for Personnel Training

54. The allegations in Paragraphs 1-22 are realleged and incorporated herein by reference.
55. Pursuant to 40 C.F.R. § 265.16(c) (2010), as adopted by reference as amended and adopted in the C.F.R. through 30 Texas Admin. Code § 335.112(a)(1), Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. Facility personnel must take part in an annual review of the initial training required.
56. During the December 2019 Inspection, EPA inspectors found the annual review provided by the Respondent did not provide the level of specificity provided in the initial training on hazardous waste management procedures relevant to personnel hazardous waste management activities.
57. EPA finds that at the time of the Inspection conducted by EPA as referenced in Paragraph 16 Respondent failed to meet the Large Quantity Generator Requirements for Personnel Training by failing to provide annual refresher training, to facility personnel following their initial training to perform their duties in a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 265 in violation of 30 Texas Admin. Code § 335.112(a)(1), incorporated by reference 40 C.F.R. 265.16(c).

V. COMPLIANCE ORDER

58. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take corrective actions to address the items alleged in Section IV above. The parties agree that Respondent has completed the required corrective actions to the satisfaction of EPA.

59. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of the Respondent and shall include the following certification:

I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Copies of all documents required by this CAFO shall be sent to the following:

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)
ATTN: William Mansfield
Dallas, Texas 75270-2102

Where required, notice shall be sent electronically by email or telephone to Enforcement Officer William Mansfield, respectively at mansfield.william@epa.gov or at 214-665-8321.

VI. TERMS OF SETTLEMENT

A. Penalty Provisions

60. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of one hundred eighty thousand dollars (\$180,000).
61. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.

3M Company
RCRA-06-2021-0922

62. The following are Respondent's options for transmitting the penalties: Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail, the check should be remitted to:

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

Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of 3M Brownwood, Docket No. RCRA-06-2021-0922) shall be clearly documented on or within the chosen method of payment to ensure proper credit.

63. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (ORC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

U.S. EPA, Region 6
1201 Elm Street, Suite 500
Enforcement and Compliance Assurance Division (ECDSR)

3M Company
RCRA-06-2021-0922

ATTN: William Mansfield
Dallas, Texas 75270-2102

Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA.

64. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
65. Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

66. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to

3M Company
RCRA-06-2021-0922

Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

67. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall also certify this in writing and in accordance with the certification language set forth in Section V (Compliance Order). Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

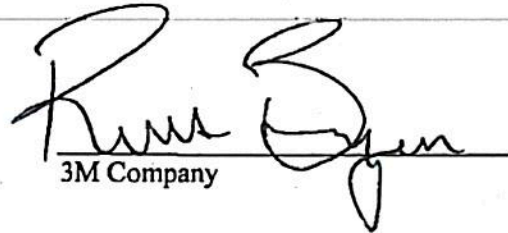
D. Effective Date of Settlement

68. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

3M Company
RCRA-06-2021-0922

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:


3M Company

3M Company
RCRA-06-2021-0922

FOR THE COMPLAINANT:

STEPHEN GILREIN

Digitally signed by STEPHEN GILREIN
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=STEPHEN GILREIN,
g.9.2342.19200300.100.1.1+68001003051794
Date: 2021.04.29 10:16:17 -0500

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U. S. EPA, Region 6

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Rucki, Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.04.27 08:30:50 -05'00'

Thomas Rucki
Regional Judicial Officer

3M Company
RCRA-06-2021-0922

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Attorneys for Complainant:

Pittman.lawrence@epa.gov

Copy via Email to Respondent:

Kpodpeskar@envirolawgroup.com

Copy via Email to Regional Hearing Clerk:

Vaughn.lorena@epa.gov

Pittman,
Lawrence

Digitally signed by Pittman, Lawrence
DN: cn=Pittman, Lawrence,
email=Pittman.Lawrence@epa.gov
Date: 2021.04.27 14:05:31 -05'00'

EPA Region 6

Electronic service was agreed to by the parties in lieu of service by certified mail to the following:

Attn: Ken Podpeskar
3M Company
4501 Highway 377 South,
Brownwood, TX 76801