



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 29 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Robert Maline
Operations Manager
Corporate Incinerator
3M Company
3M Cottage Grove Center
10746 Innovation Road
Cottage Grove, MN 55016-4600

Dear Mr. Maline:

I have enclosed a file-stamped Consent Agreement and Final Order (CAFO) which resolves 3M Company, docket no. CAA-05-2017-0043. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on *September 29, 2017*.

Pursuant to paragraph 33 of the CAFO, 3M Company must pay the civil penalty within 30 days of the filing date. Your cashier's or certified check must display the case name and case docket number.

Please direct any questions regarding this case to Kasey Barton, Associate Regional Counsel, at (312) 886-7163 or barton.kasey@epa.gov, or Matt Dawson, Assistant Regional Counsel, at (312) 886-4360 or dawson.matthew@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Brian Dickens".

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

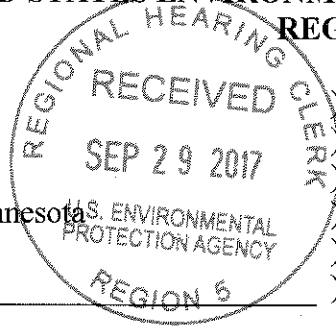
cc: Ann Coyle, Regional Judicial Officer, C-14J
Regional Hearing Clerk, E-19J
K. Barton, C-14J
M. Dawson, C-14J
S. Kilgriff, Minnesota Pollution Control Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

3M Company,
Cottage Grove, Minnesota

Respondent.



Docket No. CAA-05-2017-0043

**Proceeding to Assess a Civil Penalty Under
Section 113(d) of the Clean Air Act, 42
U.S.C. § 7413(d)**

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is 3M Company, a corporation doing business in Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Sections 112(c) and 112(d) of the CAA, 42 U.S.C. §§ 7412(c) and (d), require EPA to publish a list of categories of sources which EPA finds present a threat of adverse effects to human health or the environment due to emissions of hazardous air pollutants (HAPs), and promulgate emission standards for each source category. These standards are national technology-based performance standards whose purpose is to ensure that all sources achieve the maximum degree of reduction in emissions of HAPs that EPA determines is achievable for each source category, known as “maximum achievable control technology” or “MACT.”

10. On March 16, 1994, EPA promulgated the General Provisions of the National Emission Standards for Hazardous Air Pollutants for Source Categories (hereinafter, the MACT General Provisions) at 40 C.F.R. Part 63, Subpart A, pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d). 59 *Fed. Reg.* 12408. The MACT General Provisions provide that 40 C.F.R. Part 63 contains the national emission standards for HAPs and regulates specific categories of stationary sources that emit (or have the potential to emit) one or more HAPs.

11. The MACT General Provisions apply to the owner or operator of affected sources for which any relevant standard has been established pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, and the applicability of such requirements is set out in accordance with 40 C.F.R. § 63.1(a)(4).

12. On September 30, 1999, EPA promulgated the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (hereinafter, the HWC MACT) at 40 C.F.R. Part 63, Subpart EEE, pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d). 64 *Fed. Reg.* 53038.

13. The HWC MACT applies to the owner or operator of a hazardous waste incinerator (HWI), as defined in 40 C.F.R. § 63.1201.

14. Table 1 of the HWC MACT provides that, among others, the MACT General Provisions at 40 C.F.R. §§ 63.1, 63.4, 63.6(e) and 63.8(g) apply to the HWC MACT.

15. 40 C.F.R. § 63.6(e)(1)(i) of the MACT General Provisions set forth, in part: At all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

16. 40 C.F.R. § 63.1219(a)(5)(i) and (ii) of the HWC MACT sets forth:

(a) *Emission limits for existing sources.* [The owner or operator of a HWI] must not discharge or cause combustion gases to be emitted into the atmosphere that contain:

(5) For carbon monoxide and hydrocarbons, either:

(i) Carbon monoxide in excess of 100 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis and corrected to 7 percent oxygen (ppmV @ 7% O₂); or

(ii) Hydrocarbons in excess of 10 parts per million by volume, over an hourly rolling average (monitored continuously with a continuous emissions monitoring system), dry basis, corrected to 7 percent oxygen, and reported as propane[.]

17. 40 C.F.R. § 63.1209(a)(1) of the HWC MACT requires the owner or operator of a HWI to use either a carbon monoxide (CO) continuous emission monitor system (CEM) or a total hydrocarbon (THC) CEM to demonstrate and monitor compliance with the applicable

standard at 40 C.F.R. § 63.1219(a)(5), and further requires the owner or operator of a HWI to use an oxygen (O₂) CEM to continuously correct to the CO or THC concentration to 7 percent O₂.

18. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to, among other things, operate a major source subject to Title V except in compliance with a Title V permit after the effective date of a permit program approved or promulgated under Title V of the CAA. EPA fully approved Minnesota's Title V operating program on December 1, 2001. *See 57 Fed. Reg.* 31637, and *66 Fed. Reg.* 62967.

19. On June 28, 2012, the Minnesota Pollution Control Agency (MPCA) issued Air Emission Permit No. 16300025-002 to Respondent to operate the HWI (Title V Permit). Respondent's Title V Permit limits emissions of CO to less than or equal to 100 ppmV @ 7% O₂, and requires Respondent to use a CO CEM and O₂ CEM to demonstrate and monitor compliance with the CO emission standard in 40 C.F.R. § 63.1219(a)(5)(i).

20. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation for CAA violations that occurred on or before November 2, 2015, and \$45,268 per day of violation up to a total of \$362,141 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

21. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

23. Respondent owns and operates a HWI as defined in 40 C.F.R. § 63.1201 located at 10746 Innovation Road, Cottage Grove, Minnesota (the Facility), and is therefore subject to the HWC MACT. Respondent commenced construction of the HWI before April 20, 2004, and is an “existing source” as defined in 40 C.F.R. § 63.1201.

24. On March 11, 2016, EPA issued to Respondent an information request pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, which required Respondent to submit HWI CO CEM data for January 1, 2012, to March 18, 2016. On April 15, 2016, Respondent responded to EPA’s information request by providing HWI CO CEM data for the relevant time period.

25. On May 4, 2016, MPCA submitted information to EPA relating to MPCA’s investigation into citizen complaints of an emissions plume that was purple to pink in color from Respondent’s HWI stack that occurred on March 21, 2016. This included Respondent’s April 4, 2016 response to MPCA’s March 25, 2016 request for information regarding the incident. In the response, Respondent identified the cause of the plume as the processing of an iodine compound in two containers of waste at a rate that was greater than the maximum removal rate of iodine in the HWI’s air pollution control system scrubbers.

26. On June 30, 2016, EPA issued to Respondent a Finding of Violation (FOV), in which EPA alleges that, among other things, Respondent violated the HWC MACT and its Title V permit by discharging or causing combustion gases to be emitted from the HWI into the atmosphere that contained CO in excess of 100 ppmV @ 7% O₂ on an hourly rolling average

basis on a number of occasions over 108 days during February 1, 2012, through March 6, 2016. In the FOV, EPA also alleges that Respondent violated the MACT General Provisions by failing to operate its HWI, including the associated air pollution control equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions related to an event on March 21, 2016, which caused emissions from the HWI stack that were pink to purple in color.

27. On August 23, 2016, representatives of Respondent and EPA met to discuss the June 30, 2016, Finding of Violation. At the meeting, Respondent provided additional information to EPA relating to the allegations in the FOV. Respondent contends this additional information shows that: a number of CO exceedances occurred during periods of startup, shutdown or malfunction; and that during these periods, Respondent did not burn any waste and took steps to minimize emissions during malfunction events consistent with Respondent's Startup Shutdown and Malfunction Plan required by 40 C.F.R. § 63.1206(c)(2).

28. During the August 23, 2016 meeting, Respondent provided additional information to EPA regarding the purple plume event that occurred on March 21, 2016, including that iodine is not a listed HAP under Section 112 of the CAA, information about the nature of the iodine compound, which Respondent contends made it challenging to recognize in the Waste Stream Profile, and that Respondent updated its existing Standard Operating Procedures with respect to iodine-containing Waste Stream Profiles after the March 21, 2016 event in order to prevent any future similar incidents.

29. On October 7, 2016, Respondent provided to EPA the 1-hour rolling average operating parameter monitoring data for the CO CEMS and O₂ CEMS for the time period of March 11, 2016 through September 30, 2016. On July 26, 2017, Respondent provided to EPA

additional dates and values in which CO exceeded 100 ppmV for a 1-hour rolling average for the time period of August 30, 2016 through June 30, 2017.

30. Respondent exceeded the CO emission standards in violation of the HWC MACT at 40 C.F.R. § 63.1219(a)(5)(i) and its Title V permit by emitting CO in excess of 100 ppmV @ 7% O₂ on an hourly rolling average basis on a number of occasions between April 7, 2013 and May 19, 2017.

31. During the processing of the two iodine containers on March 21, 2016, Respondent failed to operate its HWI, including the associated air pollution control equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions, in violation of 40 C.F.R. § 63.6(e)(1)(i) and Section 112 of the CAA, 42 U.S.C. § 7412.

Civil Penalty

32. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, and cooperation consistent with the *Clean Air Act Stationary Source Penalty Policy* dated October 25, 1991, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$50,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

34. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Kasey Barton (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This

nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

38. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: barton.kasey@epa.gov (for Complainant), and kpeters1@mmm.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

39. This CAFO resolves only Respondent's liability for federal civil penalties for the facts and violations alleged in paragraphs 23 through 31 of this CAFO.

40. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

41. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 39, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

42. Respondent has signed the accompanying Administrative Consent Order, Docket No. EPA-5-17-113(a)-MN-01, in which Respondent has agreed to take specific actions in order to achieve and maintain compliance with the CAA and its implementing regulations.

43. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

44. The terms of this CAFO bind Respondent, its successors and assigns.

45. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

46. Each party agrees to bear its own costs and attorney's fees in this action.

47. This CAFO constitutes the entire agreement between the parties.

3M Company, Respondent

9-27-17
Date

Michael C Mazur
Michael Mazur
Site Director
3M Cottage Grove

United States Environmental Protection Agency, Complainant

9/29/17
Date

Ed. Nam
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order

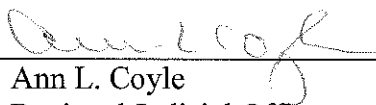
In the Matter of: 3M Company

Docket No. CAA-05-2017-0043

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

September 29, 2017
Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: 3M Company
Docket Number: CAA-05-2017-0043

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, docket number CAA-05-2017-0043, which was filed on September 29, 2017, in the following manner to the following addressees:

Copy by certified mail
Return-receipt:

Robert Maline
Operations Manager, Corporate Incinerator
3M Company
3M Cottage Grove Center
10746 Innovation Road
Cottage Grove, MN 55016-4600

Copy by E-mail to
Attorney for Respondent:

Karna Peters, Associate General Counsel, Supply Chain
3M Legal Affairs
Office Location: 10E/20
3M Center, 220-9E-02
P.O. 33428
St. Paul, MN 55133-3428
kpeters1@mmm.com

Copy by E-mail to
Attorney for Complainant:

Kasey Barton, Associate Regional Counsel
Barton.Kasey@epa.gov

Matthew Dawson, Assistant Regional Counsel
Dawson.Matthew@epa.gov

Copy by e-mail to Regional
Judicial Officer:

Ann Coyle
Coyle.Ann@epa.gov

Dated:

September 29, 2017

L. Dawn Whitehead

L. Dawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

Certified Mail Receipt Number:

7009 1680 0000 7662 7023