

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0023
)	
3M Company)	Proceeding to Assess a Civil Penalty
Saint Paul, Minnesota)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is 3M Company doing business in Minnesota, for its facility located in Cottage Grove, 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 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

Benzene Waste Operations

9. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Benzene Waste Operations (Subpart FF) at 40 C.F.R. §§ 61.340 through 61.358.

10. Subpart FF applies to owners and operators of chemical manufacturing plants. *See* 40 C.F.R. § 61.340(a).

11. Subpart FF, at 40 C.F.R. § 61.356, requires the owner or operator to keep records in a readily accessible location at the facility site for a period of not less than two years from the date the information is recorded.

12. Subpart FF, at 40 C.F.R. § 61.357(c), requires the owner or operator to annually submit a report to EPA that includes the total annual benzene quantity from facility waste determined in accordance with 40 C.F.R. § 61.355(a); a table identifying each waste stream and whether or not the waste stream will be controlled for benzene emissions in accordance with Subpart FF; and for each waste stream identified as not being controlled for benzene emission specified the information required in 40 C.F.R. § 61.357(c)(3)(i)-(vi).

Off-Site Waste and Recovery Operations

13. Under Section 112 of the CAA, EPA promulgated the NESHAP for Off-Site Waste and Recovery Operations (Subpart DD) at 40 C.F.R. §§ 63.680 through 63.698.

14. Subpart DD applies to any major source of hazardous air pollutant (HAP) emissions that receives off-site material, and, among other things, the operation is regulated as a hazardous waste treatment, storage and disposal facility under either 40 C.F.R. Part 264 or Part 265. *See* 40 C.F.R. § 63.680(a).

15. An off-site material, among other materials described in 40 C.F.R. § 63.680(b)(1), is a waste, used oil, or used solvent. *See* 40 C.F.R. § 63.680(b)(1)(i).

16. Subpart DD, at 40 C.F.R. § 63.680(e)(1)(i), states that owners or operators of existing affected sources that commenced construction or reconstruction before October 13, 1994, and received off-site material for the first time before February 1, 2000, must achieve compliance on or before February 1, 2000, unless an extension has been granted by the EPA Administrator as provided in 40 C.F.R. § 63.6(i).

17. Subpart DD, at 40 C.F.R. § 63.685(c), requires a Tank level 1 to control air emissions from the tank in accordance with 40 C.F.R. Part 63, Subpart OO.

18. Subpart DD, at 40 C.F.R. § 63.685(d) and (g), requires a Tank level 2 to be covered with a fixed roof and vented through a closed vent system to a control device that complies with 40 C.F.R. § 63.693.

19. Subpart DD, at 40 C.F.R. § 63.693(h), requires the owner or operator to design and operate a flare control device in accordance with 40 C.F.R. § 63.11(b). Among other requirements, an air assisted flare must only be used with a net heating value of the gas being combusted at 300 Btu/scf in accordance with 40 C.F.R. § 63.11(b)(6)(ii).

20. Subpart DD, at 40 C.F.R. § 63.683(d), requires the owner or operator to control leaks from each equipment component that is part of an affected source as specified in 40 C.F.R. § 63.680(c)(3), and implement leak detection and control measures in accordance with 40 C.F.R.

§ 63.691. Among other requirements, the leak control is required at each pressure relief device in contact with off-site material having total HAP concentration equal or greater than 10 percent by weight and intended to operate for 300 hours or more during a calendar year. *See* 40 C.F.R. §§ 63.680(c)(3) and 63.683(d).

21. Subpart DD, at 40 C.F.R. § 63.691, requires the owner or operator to control air emissions from each equipment leak by following the requirements of 40 C.F.R. Part 61, Subpart V, or 40 C.F.R. Part 63, Subpart H, for affected sources that commenced construction or reconstruction before March 18, 2015. *See* 40 C.F.R. § 63.691(b).

22. Subpart DD, at 40 C.F.R. § 63.691, further requires the owner or operator to operate each pressure relief device in gas/vapor service with an instrument reading of less than 500 parts per million (ppm) above background, as detected by Method 21 of 40 C.F.R. Part 60, Appendix A. *See* 40 C.F.R. § 63.691(c)(1).

Tanks Level 1

23. Under Section 112 of the CAA, EPA promulgated the NESHAP for Tanks – Level 1 (Subpart OO) at 40 C.F.R. §§ 63.900 through 63.908.

24. Subpart OO applies to the control of air emissions from tanks for which another subpart of 40 C.F.R. parts 60, 61, or 63 references the use of subpart OO, in this case.

25. Subpart OO, at 40 C.F.R. 40 C.F.R. § 63.901, defines “safety device” as a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust

the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

26. Subpart OO, at 40 C.F.R. § 63.902(c)(1), requires that whenever a regulated-material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except opening of closure devices or removal of the fixed roof is allowed as follows: (i) to provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations, and following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank; or (ii) to remove accumulated sludge or other residues from the bottom of tank.

27. Subpart OO, at 40 C.F.R. § 63.905, requires the determination of no detectable organic emissions in accordance with the procedures specified in Method 21 of 40 C.F.R. Part 60 Appendix A. Each potential leak interface (i.e., a location where organic vapor leakage can occur), on the cover and associated closure device, such as the sealing seat interface on a spring-loaded pressure relief valve, must be tested. For equipment to be considered to operate with no detectable emissions, organic emission must be less than 10,000 ppmv for a seal around a shaft that passes through a cover opening, and 500 ppmv for all other interfaces, in accordance with the procedures in 40 C.F.R. § 63.905(a)(8)(i) or (ii).

Equipment Leaks

28. Under Section 112 of the CAA, EPA promulgated the NESHAP for Equipment Leaks (Subpart H) at 40 C.F.R. §§ 63.160 through 63.183.

29. Subpart H applies to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottom receivers, instrumentation systems, and control devices or closed vent systems within a source subject to the provisions of a specified subpart in 40 C.F.R. Part 63 that references Subpart H. *See* 40 C.F.R. § 63.160(a).

30. Subpart H defines “pressure relief device or valve” as a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 psig or by a vacuum are not pressure relief devices. *See* 40 C.F.R. § 63.161.

31. Subpart H requires each pressure relief device in gas/vapor service to be operated with an instrument reading of less than 500 ppm above background as measured following Method 21 of 40 C.F.R. Part 60, Appendix A and requirement in 40 C.F.R. § 63.180(c). *See* 40 C.F.R. § 63.165(a).

32. Subpart H requires each pressure relief device be return to a condition indicated by an instrument reading less than 500 parts per million above background, within 5 calendar days, after each pressure release, unless the pressure relief device is placed in delay of repair as provided in § 63.171. No later than 5 calendar days after the pressure release and being return to organic HAP service, the pressure relief device shall be monitored to confirm the condition

indicated by an instrument reading of less than 500 parts per million above background as measured by the method specified in § 63.180(c). *See* 40 C.F.R. § 63.165(b).

33. Subpart H gives the owner or operator the choice to adjust or not to adjust the instrument reading for background when monitoring pressure relief device. Both choices include the requirement of traversing the instrument probe around all potential leak interfaces as close as possible as described in Method 21 of 40 C.F.R. Part 60 Appendix A. *See* 40 C.F.R. § 63.180(c).

Waiver

34. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$51,796 per day of violation up to a total of \$414,364 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.

35. The Administrator may assess a penalty greater than \$414,396 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

36. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$414,396 is appropriate for an administrative penalty action.

37. 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.

38. 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

Facts

39. 3M Company's Cottage Grove facility (3M Cottage Grove) was a hazardous waste storage and incineration facility, located in 10876 Keats Avenue South, Cottage Grove, Minnesota.

40. Through December 2021, 3M Cottage Grove received hazardous waste from all 3M Company facilities by either truck in tank truck or storage drums. The hazardous waste was stored in storage tanks until its transferred to a rotary kiln for incineration. The incinerator located at the Cottage Grove facility permanently suspended operations on or about January 1, 2021.

41. EPA conducted a CAA on-site inspection on June 5, 2019. During the inspection EPA inspectors used toxic vapor analyzers (TVA) and a forward looking infrared (FLIR®) camera to observe the equipment on tanks 20, 21, 22, 23, 27 and 28 at 3M's Cottage Grove facility.

42. During the on-site inspection, EPA found volatile organic matter emissions from the safety devices on storage tanks nos. 20, 21, 22, 23, 27, 28, each of which supported incinerator operations.

43. Tanks 20, 21, 23, 27 and 28 were subject to level 1 control of storage vessels requirements in Subpart OO, and fugitive emission requirements under Subpart OO and Subpart H.

44. As part of the inspection, EPA requested records, including Subpart FF annual compliance reports.

45. 3M Company submitted leak detection and repair (LDAR) related records and Subpart FF annual compliance reports on July 12, 2019 and August 27, 2019.

46. The submitted LDAR records include a statement from 3M Company that it was complying with 40 C.F.R. Part 264 Subpart BB by complying with the overlap provisions in 40 C.F.R. Part 63 Subpart DD and Subpart H.

47. On September 27, 2019, EPA issued 3M's Cottage Grove a Finding of Violation (FOV).

48. On December 20, 2019, 3M Company provided its written response to EPA's FOV.

49. On March 11, 2021, the Minnesota Pollution Control Agency (MPCA) advised EPA that on February 10, 2021, 3M Company notified MPCA that potential excess emissions had been released related to Tank 1 (also referred to as "TK 002") that is controlled by an air assisted flare.

50. On May 14, 2021, EPA sent 3M Cottage Grove a CAA Section 114 information request.

51. The CAA Section 114 information request included questions related to the excess emissions from Tank 1, LDAR, preventative maintenance on pressure relief devices, and the total annual benzene reports required by Subpart FF.

52. On November 1, 2021, and June 10, 2022, 3M Company submitted its written responses to EPA's information request and follow up requests for information, including its

calculation of the amount of hazardous waste that was not combusted between July 28, 2020, and December 28, 2020.

53. On July 11, 2022, 3M advised EPA that its 3M Cottage Grove facility had shut down all of its off-site hazardous waste management operations. More specifically, the facility: suspended incinerator waste processing on January 1, 2022; stopped receiving off-site waste on December 17, 2021; on December 31, 2021, 3M mechanically emptied, rinsed and cleaned its hazardous waste tanks; and completed rinsing and cleaning of all hazardous waste tanks on February 27, 2022. Further, off-site waste had been transferred to third-party facilities for disposal consistent with the requirements of the Resource Conservation and Recovery Act. The incinerator kiln was cold, and its refractory material had been removed and transferred off-site as hazardous waste. 3M Company was planning to decontaminate its hazardous waste storage tanks, to either transfer them to other facilities or recycle them as scrap metal. 3M Cottage Grove had started the process of surrendering its Title V permit with MPCA.

Violations

54. 3M Company failed to prepare and maintain its 2017 and 2018 annual compliance reports that include total benzene quantities as required by 40 C.F.R. §§ 61.355(a), and 61.357(a) and (c).

55. Between July 28, 2020 and December 28, 2020, 3M Company failed to properly operate its control device while hazardous air pollutants were being vented through a control vent system. Specifically, 3M Company failed to operate an air-assisted flare with a minimum 300 Btu/scf of net heating value of the gas being combusted, as required by 40 C.F.R. §§ 63.693(h) and 63.11(b)(6)(ii).

56. 3M Company failed to properly maintain safety devices in hazardous waste storage tanks 20, 22, 23, 27 and 28 as required by 40 C.F.R. § 63.902(c)(2).

57. 3M Company failed to properly monitor for hazardous waste fugitive emissions as required by Method 21 in Appendix A-7 of Part 60, and 40 C.F.R. §§ 63.691(b) and (c), and 63.180(c).

Civil Penalty

58. 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, Complainant has determined that an appropriate civil penalty to settle this action is \$275,000.

59. Within 30 days after the effective date of this CAFO, Respondent must pay the civil penalty by either sending a cashier's or certified check by U.S. Postal Service mail 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

or by sending a cashier's or certified check by express mail payable to "Treasurer, United States of America," to:

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

[The check must note Respondent's name and the docket number of this CAFO.]

60. 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:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Mary McAuliffe
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
mcauliffe.mary@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

62. 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.

63. 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 attorneys' 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

64. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and adam.kushner@hoganlovells.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

65. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

66. 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.

67. 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 65, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

68. Respondent certifies that it is complying fully with 40 C.F.R. Part 61, Subpart FF, and 40 C.F.R. Part 63, Subparts H, DD and OO.

69. 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).

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

71. 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.

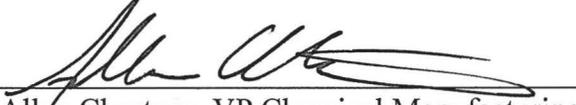
72. Each party agrees to bear its own costs and attorney's fees in this action.

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

**Consent Agreement and Final Order
In the Matter of: 3M Company**

3M Company, Respondent

03/28/2023
Date


Allen Chasteen, VP Chemical Manufacturing Ops
3M Company

**Consent Agreement and Final Order
In the Matter of: 3M Company**

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2023.03.30
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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: 3M Company
Docket No. CAA-05-2023-0023**

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.

Date

ANN COYLE

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