

FILED

2008 SEP 24 AM 8:14

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

NANCY J. MARVEL
Regional Counsel

LETITIA D. MOORE
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3928

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:)	Docket No.	
)	EPCRA-09-2008-	00 1 2
3M Company)	CONSENT AGREEMENT	
3M Corporate Headquarters)	AND	
3M Center)	FINAL ORDER	
St. Paul, MN 55144-1000)	PURSUANT TO 40 C.F.R.	
)	SECTIONS 22.13 and 22.18	
Respondent)		
)		

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX. Respondent is 3M Company, a corporation organized under the laws of the State of Delaware.

2. This CA/FO, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory form (“Inventory Form”) if hazardous chemicals are present at the facility during the preceding calendar year in quantities above the threshold levels established in 40 C.F.R. § 370.20(b). The Inventory Form must be submitted by March 1 of each year to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the fire department(s) having jurisdiction over the facility.

C. GENERAL ALLEGATIONS

4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil penalties for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.
5. The Administrator of EPA has delegated enforcement authority under EPCRA to the Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, has delegated the authority to enforce EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund Division with delegation R9 1290.18.

6. At all times relevant to this CA/FO, Respondent was a “person” as defined in EPCRA section 329(7), 42 U.S.C. § 11049(7) , and 40 C.F.R. § 370.2.
7. The Irvine-Dental, Monrovia-Unitek, Northridge, Meriden-Cuno, Cordova-SMMD, Knoxville, 3M Center-Maplewood, St. Paul-Holman Field, Flemington, Aberdeen, Austin-Research Blvd. and Murray facilities (“the Facilities”), and the real property and improvements thereto located, are each a “facility” as defined in EPCRA section 329(4), 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.2. The location of each of the Facilities is set forth in Attachment A to this CA/FO. The particulars from Attachment A are incorporated herein by reference as if they were set forth here in their entirety.
8. With the exception of the Meriden-Cuno facility, which Respondent purchased in 2005, at all times relevant to this CA/FO, Respondent was the owner or operator of the Facilities and was in charge of each of the Facilities during the relevant periods described below. For purposes of the chemicals, activities, and alleged violations described in this CA/FO only, Respondent assumes responsibility for the Meriden-Cuno facility for the relevant periods, including those predating Respondent’s purchase of the Meriden-Cuno facility.
9. At all times relevant to this CA/FO, Respondent used sulfuric acid, Chemical Abstract Service Registry (“CAS”) Number 7664-93-9, at each of the Facilities. At all times relevant to this CA/FO, Respondent used lead, CAS Number 7439-92-1, at each of the Facilities.
10. At all times relevant to this CA/FO, a daily average of at least 500 pounds of sulfuric acid were present at each of the Facilities.

11. At all times relevant to this CA/FO, a daily average of at least 10,000 pounds of lead were present at each of the Irvine-Dental, Monrovia-Unitek, Northridge, Meriden-Cuno, Cordova-SMMD, Knoxville, and St. Paul-Holman Field facilities.
12. Sulfuric acid is an “extremely hazardous substance” as defined in 40 C.F.R. § 370.2.
13. Lead is a “hazardous chemical” as defined in 40 C.F.R. § 370.2.
14. The minimum threshold level for reporting under Section 312 of EPCRA, 42 U.S.C. § 11022, for sulfuric acid is 500 pounds. 40 C.F.R. § 370.20(b)(1).
15. The minimum threshold level for reporting under Section 312 of EPCRA, 42 U.S.C. § 11022, for lead is 10,000 pounds. 40 C.F.R. § 370.20(b)(4).
16. In a letter to EPA dated August 1, 2006, Respondent identified the potential for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25 at various of Respondent’s facilities and committed to complete an EPCRA compliance audit of its facilities to determine the extent of the EPCRA violations.
17. In a letter dated October 17, 2006, Respondent reported the results of its EPCRA compliance audit to EPA and disclosed violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25 at the Facilities.
18. Respondent submitted completed and corrected Inventory Forms containing information on chemicals used at the Irvine-Dental, Monrovia-Unitek, Northridge, 3M Center-Maplewood, St. Paul-Holman Field, Flemington, and Aberdeen facilities to the appropriate SERCs, LEPCs and fire departments on or around October 18, 2006.
19. Pursuant to discussions with the affected state and local agencies, Respondent submitted completed and corrected Inventory Forms containing information on chemicals used at the Austin-Research Blvd., Murray, Meriden-Cuno, Cordova-SMMD, and Knoxville

facilities to the appropriate SERCs, LEPCs and fire departments on or around March 1, 2007.

D. ALLEGED VIOLATIONS

COUNT I

(Failure to Timely Submit Annual Chemical Inventory Forms for Sulfuric Acid)

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. Respondent is required to obtain or develop, and make available an MSDS under 40 C.F.R. § 1910.1200(g) for each of the Facilities because it is engaged in a business where chemicals are either used or distributed, or are produced for use or distribution at each of the Facilities.
22. Between January 1, 2003 and December 31, 2005, Respondent used sulfuric acid at each of the Facilities in quantities above the applicable thresholds established in 40 C.F.R. § 370.20(b).
23. Respondent disclosed violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25, in connection with the use and storage of lead-acid forklift batteries at each of the Facilities.
24. Respondent failed to report accurate quantities of sulfuric acid used at each of the Facilities above the applicable thresholds during calendar years 2003, 2004 and 2005, in violation of 40 C.F.R. § 370.25.
25. Respondent's failure to submit Inventory Forms containing information on hazardous chemicals present at the Facilities during calendar years 2003, 2004 and 2005 to the SERC, the LEPC, and the appropriate fire department(s) for each of the Facilities on or

before March 1 of 2004, 2005 and 2006, is a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

COUNT II

(Failure to Timely Submit Annual Chemical Inventory Forms for Lead)

26. Paragraphs 1 through 25 above are incorporated herein by this reference as if they were set forth here in their entirety.
27. Between January 1, 2003 and December 31, 2005, Respondent used lead at each of the Irvine-Dental, Monrovia-Unitek, Northridge, Meriden-Cuno, Cordova-SMMD, Knoxville, and St. Paul-Holman Field facilities in quantities above the applicable thresholds established in 40 C.F.R. § 370.20(b).
28. Respondent failed to report accurate quantities of lead used at the Irvine-Dental, Monrovia-Unitek, Northridge, Meriden-Cuno, Cordova-SMMD, Knoxville, St. Paul-Holman Field, Flemington, Austin-Research Blvd., and Murray facilities above the applicable thresholds during calendar years 2003, 2004 and 2005, in violation of 40 C.F.R. § 370.25.
29. Respondent's failure to submit Inventory Forms containing information on hazardous chemicals present at the Irvine-Dental, Monrovia-Unitek, Northridge, Meriden-Cuno, Cordova-SMMD, Knoxville, St. Paul-Holman Field, Flemington, Austin-Research Blvd., and Murray facilities during calendar years 2003, 2004 and 2005 to the SERC, the LEPC, and the appropriate fire department(s) for each facility on or before March 1 of 2004, 2005 and 2006, is a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

E. CIVIL PENALTY

30. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt Collection Improvement Act of 1996, see 40 C.F.R. Part 19, authorizes a civil penalty of up to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997. For violations that occur on or after March 15, 2004, a civil administrative penalty of \$32,500 per day is authorized.
31. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations*, 65 FR 19618, ("Audit Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially reduce the gravity component of a penalty if a respondent satisfies nine conditions set forth in the Audit Policy.
32. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic discovery of the violation through an environmental audit or a compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.
33. Regulated entities that meet all nine conditions in the Audit Policy will not face any gravity-based civil penalties. If the regulated entity meets all but the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties by 75%. EPA reserves the right to collect any economic benefit realized as a result of the violation disclosed.

34. Respondent has met all nine conditions outlined in the audit policy and therefore will not face gravity-based civil penalties.
35. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System. Respondent discovered the violations disclosed through an environmental audit of approximately 90 facilities.
36. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did not result from any legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.
37. Prompt Disclosure. Respondent contacted EPA prior to its multi-facility audit and agreed upon a schedule of 60 days for completing an audit of approximately 90 facilities. The time to complete the multi-facility audit expired on October 15, 2006. In a letter dated October 17, 2006, Respondent disclosed that violations were discovered at fifteen (15) of the approximately 90 facilities audited. The disclosures were therefore promptly disclosed for purposes of the Audit Policy.
38. Discovery and Disclosure Independent of Government or Third Party Plaintiff. Respondent discovered and disclosed the violations to EPA prior to any federal, state, or local agency inspection or investigation, notice of citizen suit, the filing of a third-party complaint, the reporting of the violations by a "whistle-blower," or imminent discovery by a regulatory agency in connection with any of the Facilities.
39. Correction and Remediation. Respondent corrected the violations within 60 days of discovery or as directed by the affected state and local jurisdictions. Respondent submitted completed and corrected Inventory Forms to the appropriate SERC, the LEPC

and the Fire Department on or about October 18, 2006 or by March 1, 2007. The disclosed violations did not cause any environmental or human harm.

40. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to prevent a recurrence of any violation of Section 312 of EPCRA, 42 U.S.C. § 11022: Facility staff at all 90 facilities have been refreshed on the requirements of EPCRA Section 312, 42 U.S.C. § 11022.
41. No Repeat Violations. Respondent has not had any other occurrence of these specific violations at the Facilities within the past three years, nor does Respondent's past non-compliance at other facilities indicate a pattern of violations.
42. Other Violations Excluded. The violations did not result in serious actual harm, present an imminent and substantial endangerment to public health or the environment, or violate the specific terms of any judicial or administrative order or consent agreement.
43. Cooperation. Respondent has fully cooperated with EPA in determining the applicability of the Audit Policy
44. In signing this CA/FO, Respondent certifies under penalty of law that the information submitted to EPA in the letters dated August 1, 2006 and October 17, 2006, disclosing violations of EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs 35-43 of this CA/FO are based upon true, accurate, and complete information that the signatory can verify personally, or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.
45. EPA has determined that the violations resulted in an insignificant amount of economic benefit.

46. For the reasons set forth above, all penalties based on the gravity of the violations and the savings of economic costs related to the failure to timely submit the Inventory Forms are waived.

F. ADMISSIONS AND WAIVERS

47. For purposes of this proceeding, Respondent admits the jurisdictional allegations above, and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R.

§§ 22.4. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further,

48. Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

49. Respondent admits any allegations of fact or law set forth in Section C and D of this CA/FO. Respondent hereby waives any rights it may have to contest the allegations set forth in this CA/FO and waives any rights it may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent hereby consents to the issuance of this CA/FO without adjudication and waives any rights it may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

50. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns and upon all persons acting under or for Respondent. This CA/FO shall constitute full settlement of the violations alleged herein.

51. No change in ownership or corporate, partnership, or legal status relating to the Facilities will in any way alter Respondent's obligations and responsibilities under this CA/FO.

52. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind Respondent to it.

H. CERTIFICATION OF COMPLIANCE

50. Upon signing this CA/FO, Respondent certifies to EPA that the each of Facilities has fully complied with the requirements of Section 312 of EPCRA that formed the basis for the violations alleged in Section D above, and that each of the Facilities is now in compliance with the relevant current reporting obligations under Sections 302, 303, 311, 312, and 313 of EPCRA.

51. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information that the signatory can verify personally, or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

52. Because Respondent has met all nine conditions set forth in the Audit Policy, Complainant has not sought gravity-based penalties for the violations alleged.

53. Based on Complainant's determination that any economic benefit derived from the violations was insignificant, Complainant has not sought to collect any economic benefit penalty for the violations alleged.
54. Complainant and Respondent hereby consent to the assessment of a civil penalty in the amount of ZERO DOLLARS (\$0) in settlement of the violations set forth in Section D above. This CA/FO constitutes a settlement of the civil and administrative penalty claims of the United States for the violations of Section 312 of EPCRA specifically alleged in Section D above.
55. The effect of the settlement described above is conditional upon the accuracy of Respondent's representations to EPA as memorialized in paragraphs 35-43 of this CA/FO and Respondent's self-disclosure dated August 1, 2006 and October 17, 2006.

J. RESERVATION OF RIGHTS

56. EPA expressly reserves all rights and defenses that it may have.
57. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including without limitation, the right to require Respondent to perform tasks in addition to those required by this CA/FO and the right to assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other appropriate action, in the event that Respondent fails to comply with any of the requirements of this CA/FO.
58. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under EPCRA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

59. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted, except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations set forth in Section D of this CA/FO.
60. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits.
61. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA. EPA reserves its right to seek reimbursement from Respondent for any response costs incurred by the United States that may result or arise from the alleged counts set forth in Section D.

K. OTHER CLAIMS

62. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from any one of the Facilities.

L. MISCELLANEOUS

63. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
64. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

65. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
66. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED,

For Respondent **3M COMPANY**

8.28.08

Date

Jean B Sweeney

Jean Sweeney
Vice President
Environmental, Health & Safety Operations
3M Company

For Complainant **U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX**

09/22/2008

Date

For Keith Takata

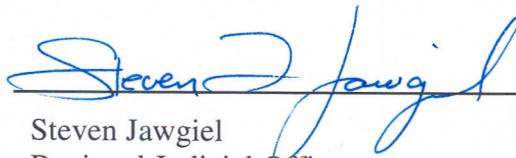
Keith Takata
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA-09-2008-) be entered and that Respondent 3M Company pay a civil penalty in the amount of ZERO DOLLARS (\$0).

09/23/08

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

(Irvine-Dental)
3M ESPE
Dental Products
2111 McGaw Avenue
Irvine, CA 92615-4991

(Monrovia - Unitek)
3M Company
2724 S. Peck Road
Monrovia, CA 91016-5097

(Northridge)
3M Company
19901 Nordhoff St.
Northridge, CA 91324-3213

(Meriden - Cuno)
3M Company
400 Research Pkwy.
Meriden, CT 06450-7172

(Cordova - SMMD)
3M Company
22614 Route 84N.
Cordova, IL 61242-9779

(Knoxville)
3M Company
3406 East Pleasant Street
Knoxville, IA 50138-9517

(3M Center - Maplewood)
3M Center
Building 42-6E-37
St. Paul, MN 55144

(St. Paul - Holman Field)
3M Company
690 Bayfield Street
St. Paul, MN 55107

(Flemington)
3M Company
500 Route 202 N.
Flemington, NJ 08822-6031

(Aberdeen)
3M Company
610 North County Road 19
Aberdeen, SD 57401

(Austin - Research Blvd.)
11705 Research Blvd.
Austin, TX 78759-2419

(Murray)
3M Company
575 W. Murray Blvd.
Murray, UT 84123-4611

CERTIFICATE OF SERVICE

I hereby certify that the original copy of the foregoing Consent Agreement and Final Order in the matter of 3M Company, has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent

by Certified Mail, Return Receipt Requested, to:

**Mr. Michael Nash, Assistant General Counsel
Environmental, Health & Safety Operations
3M Company
P.O. Box 33428
St. Paul, MN 55133**

CERTIFIED MAIL NO.

by Regular Mail to:

**Michael Drysdale
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498**

by Hand Delivery to:

**Letitia D. Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105**

SEP 24 2008

Date



**Danielle Carr
Regional Hearing Clerk**