



ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:
3M Company
Docket No. CAA-HQ-2022-8420

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

[Handwritten signature]

Aaron P. Avila
Environmental Appeals Judge

Dated: Feb 07, 2022

1 The three-member panel ratifying this matter is composed of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

3M Company,

Respondent.

Docket No. CAA-HQ-2022-8420

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 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 United States Environmental Protection Agency (“EPA”). On the EPA’s behalf, Mary E. Greene, Director, Air Enforcement Division, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is 3M Company (“3M”), a Delaware corporation headquartered in Saint Paul, Minnesota. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent (together, “the Parties”), having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order”

or “Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).
7. The Environmental Appeals Board is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(a) and 22.18(b).
8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

9. As discussed in further detail in Section D, this matter concerns several different regulations promulgated by the EPA. However, the penalty at issue in this Consent Agreement is only based on alleged violations of 40 C.F.R. Part 63, Subpart HHHHH - National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.

CAA NSPS 40 C.F.R. Part 60

10. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator to publish a list of categories of stationary sources that cause or

contribute significantly to air pollution that may reasonably be anticipated to endanger the public health or welfare and promulgate standards of performance for new sources within those categories.

11. These standards, commonly known as the New Source Performance Standards (“NSPS”), are codified at 40 C.F.R. Part 60.
12. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits an owner or operator from operating any new source in violation of an NSPS after the effective date of the NSPS applicable to such source.
13. Pursuant to Section 111(b) of the CAA, the Administrator promulgated the following NSPSs, which are relevant to this matter:
 - (a) Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations, codified at 40 C.F.R. §§ 60.440-60.447;
 - (b) Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries, codified at 40 C.F.R. §§ 60.730-60.737;
 - (c) Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities, codified at 40 C.F.R. §§ 60.740-60.748; and
 - (d) Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, codified at 40 C.F.R. §§ 60.4200-60.4219.

CAA NESHAP 40 C.F.R. Part 63

14. Section 112 of the CAA, 42 U.S.C. § 7412, establishes the CAA’s National Emissions Standards for Hazardous Air Pollutants (“NESHAP”) program for controlling emissions of hazardous air pollutants (“HAPs”), achieved through the

implementation of maximum achievable control technology (“MACT”) at “major sources” of HAPs.

15. Pursuant to Sections 112(c) and (d) of the CAA, 42 U.S.C. §§ 7412(c), (d), the Administrator has listed categories and subcategories of major sources of HAPs and promulgated regulations establishing emissions standards and/or work practices applicable to major sources of HAPs in each such category or subcategory, which are codified at 40 C.F.R. Parts 61 and 63.
16. Section 112(i)(3) of the CAA, 42 U.S.C. § 7412(i)(3), provides that after the effective date of any emissions standard, limitation, or regulation promulgated pursuant to Section 112, no person may operate a source in violation of an applicable NESHAP regulation.
17. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, the Administrator promulgated the following NESHAPs, which are relevant to this matter:
 - (a) Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating, codified at 40 C.F.R. §§ 63.3280-63.3420;
 - (b) Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial & Institutional Boilers and Process Heaters codified at 40 C.F.R. §§ 63.7480-63.7575;
 - (c) Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing, codified at 40 C.F.R. §§ 63.7980-63.8105;and

(d) Subpart VVVVVV - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources, codified at 40 C.F.R. §§ 63.11494-63.11503.

CAA NESHAP 40 C.F.R. Part 63, Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

18. As relevant to the penalty at issue in this matter, the Administrator promulgated requirements regarding the emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations on December 11, 2003. *See* 68 Fed. Reg. 69,185. These requirements are found at 40 C.F.R. Part 63, Subpart HHHHH - National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
19. Among other requirements, 40 C.F.R. § 63.8000 requires owners and operators of miscellaneous coating manufacturing operations to comply with the emission limits and work practice standards set forth in Tables 1 through 5 of Subpart HHHHH at all times, except during periods of startup, shutdown, and malfunction. In addition, 40 C.F.R. § 63.8005 sets forth specific requirements for process vessels.

D. STIPULATED FACTS

20. Respondent 3M is a manufacturer of industrial, safety, and consumer products and is incorporated under the laws of the State of Delaware. Respondent has its headquarters in Saint Paul, Minnesota.
21. On May 2, 2012, the EPA accepted Respondent's March 27, 2012 proposal to enter into a voluntary Corporate Audit Agreement to audit all 3M manufacturing facilities for compliance with the Act under the EPA's policy entitled *Incentives for Self-*

Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (Apr. 11, 2000) (“Audit Policy”).

22. The scope of the audit covered each NSPS and NESHAP rule not identified prior to the Corporate Audit Agreement as an applicable rule of a 3M manufacturing facility; each NSPS and NESHAP rule which was a known applicable rule prior to the Corporate Audit Agreement, but for which one or more applicable equipment items were omitted from the corresponding NSPS affected facility or NESHAP affected source; and each applicable emissions standard, monitoring, recordkeeping, and reporting requirement associated with each NSPS and NESHAP rule discovered as noted above.
23. Pursuant to agreement by the Parties, Respondent was granted a one-year extension to complete the assessment of compliance with applicable NSPSs and NESHAPs at its manufacturing facilities by January 1, 2015. The Parties also agreed that the final report would be due the earlier of either 60 days of completion of all facility assessments or March 2, 2015. Subsequently, the Parties agreed to extend the date for completion of the work and submission of the final report to November 20, 2015.
24. Respondent provided the EPA with periodic progress reports throughout the time period during which it conducted its assessment. Respondent’s progress reports were submitted as letters dated September 28, 2012; January 31, 2013; June 1, 2013; October 1, 2013; January 31, 2014; May 31, 2014; September 30, 2014; January 30, 2015; and May 31, 2015.

25. On November 20, 2015, Respondent provided its final audit report. Respondent subsequently submitted additional information through several addenda, with the first and last addenda dated May 17, 2016 and April 23, 2020, respectively.
26. Respondent's audit review evaluated the applicability of thirty-one different NSPSs and eighty-one different NESHAPs for thousands of manufacturing operations, processes, and individual items of equipment across approximately one hundred 3M manufacturing facilities in over thirty different states.
27. With the exception of the violations referenced in Paragraph 28 and identified in Attachment A, all of Respondent's self-disclosed violations returned to compliance more than five years before the date of this Consent Agreement. Accordingly, those violations are outside the five-year statute of limitations for actions to enforce a penalty found in 28 U.S.C. § 2462 and are not relevant to this matter.
28. The self-disclosed violations that are within the five-year statute of limitations for actions to enforce a penalty under 28 U.S.C. § 2462 are identified in Attachment A, hereby incorporated by reference, and are the subject of this Agreement.
29. As relevant to this matter, Respondent voluntarily disclosed violations of:
 - (a) NSPS 40 C.F.R. Part 60, Subparts RR, UUU, VVV, IIII; and
 - (b) NESHAP 40 C.F.R. Part 63, Subparts JJJJ, DDDDD, HHHHH, VVVVVV.
30. Respondent's final audit report, together with Respondent's progress reports and additional information submitted to the EPA, summarized steps taken to prevent recurrence of any violations at the facilities at which they were identified after they had been disclosed.

31. Respondent's self-disclosed violations fall within the following three categories:
(a) notification, reporting, and recordkeeping issues; (b) inspection, performance testing, and monitoring issues; and (c) work practice and emission standards issues.
32. The EPA is seeking a civil penalty only for 3M's violation of 40 C.F.R. Part 63, Subpart HHHHH - National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing at its Nevada, Missouri facility.
33. The Parties have engaged in cooperative and good faith efforts to resolve Respondent's self-disclosed violations.
34. The disclosures listed in Attachment A have been determined by the EPA to satisfy all nine of the conditions set forth in the Audit Policy and therefore qualify for a 100% reduction of the civil penalty's gravity component.
35. Pursuant to the EPA's Audit Policy, Respondent hereby certifies and warrants as true for all the violations listed in Attachment A, the following facts upon which this Agreement is based:
 - (a) The violations were discovered through an audit;
 - (b) The violations were discovered voluntarily;
 - (c) The violations were promptly disclosed to the EPA in writing;
 - (d) The violations were disclosed prior to commencement of an agency inspection or investigation, notice of citizen suit, filing of a complaint by a third party, reporting of the violations by a "whistleblower" employee, or imminent discovery by a regulatory agency;
 - (e) The violations have been corrected;
 - (f) Appropriate steps have been taken to prevent a recurrence of the violations.

(g) The specific violations, identified in Attachment A, have not occurred within three years of the dates of disclosure referenced in the reports identified in Section D, Paragraph 25 above, at the same facilities that are the subject of this Agreement, and have not occurred within five years of the dates of disclosure referenced in the reports identified in Section D, Paragraph 25 above, as part of a pattern at multiple facilities owned or operated by Respondent. For the purposes of Subparagraph (g), a violation is:

- i. Any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or
- ii. Any act or omission for which the regulated entity has previously received penalty mitigation from the EPA or a state or local agency;

(h) The violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment and they did not violate the specific terms of any judicial or administrative final order or agreement; and

(i) Respondent has cooperated as requested by the EPA.

E. ALLEGED VIOLATIONS OF LAW

36. Respondent failed to meet notification, reporting, and recordkeeping requirements; inspection, performance testing, and monitoring requirements; and/or work practice and emission standards imposed under the foregoing NSPS, 40 C.F.R. Part 60, and NESHAP, 40 C.F.R. Part 62, rules, identified in Section C of this Agreement.
37. Specifically, and relevant to the penalty at issue in this matter, Respondent failed to

comply with the emission and work practice standards under 40 C.F.R. Part 63, Subpart HHHHH - National Emissions Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing, at its Nevada, Missouri facility.

38. Respondent is the owner and operator of two process vessels at 3M's Nevada, Missouri facility. Respondent failed to meet Subpart HHHHH's emission limits, therefore violating Section 112 of the Act, 42 U.S.C. § 7412; 40 C.F.R. § 63.8000; and C.F.R. § 63.8005.
39. The EPA hereby states and alleges that, based on the information supplied by Respondent, Respondent failed to comply with Subpart HHHHH's emission limits and work practice standards, as required by 40 C.F.R. §§ 63.8000, 63.8005, for two process vessels at its Nevada, Missouri facility between December 16, 2011, and December 16, 2016.

F. TERMS OF CONSENT AGREEMENT

40. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - (b) admits to the stipulated facts stated above;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
 - (e) waives its rights to appeal the Order accompanying this Agreement.
41. For the purpose of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions related to the Nevada, Missouri facility;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Minnesota; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for noncompliance with the Agreement or Order, and agrees that federal law shall govern in any such civil action.

42. Civil Penalty. The EPA:

- (a) alleges that the gravity component is potentially assessable against Respondent for these violations.
- (b) agrees, based upon the facts and information submitted by Respondent and upon Respondent's certification herein to the veracity of this information, that Respondent has satisfied all of the conditions set forth in the Audit Policy and

thereby qualifies for a 100% reduction of the gravity component of the civil penalty that otherwise would apply to the violations listed in Attachment A.

- (c) pursuant to the Audit Policy, will waive 100% of the gravity-based penalties assessed for the violations listed in Attachment A.
- (d) has discretion, under the Audit Policy, to assess a penalty equivalent to the economic benefit Respondent gained as a result of its noncompliance.
- (e) has determined, based on information provided by Respondent and use of the Economic Benefit (“BEN”) computer model, that Respondent obtained an economic benefit of \$170,000 as a result of its noncompliance in this matter for the violations listed in Attachment A.

43. Penalty Payment. The civil penalty agreed upon by the Parties for settlement purposes is \$170,000. Respondent agrees to:

- (a) pay the civil penalty of \$170,000 (“EPA Penalty”) within 30 calendar days of the Effective Date of this Agreement.
- (b) pay the EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with “Docket No. CAA-HQ-2022-8420.”
- (c) within 24 hours of payment of the EPA Penalty, send proof of payment via electronic mail to Jennifer Lee at Lee.Jennifer@epa.gov and to the Clerk of the Environmental Appeals Board at Clerk_EAB@epa.gov. (“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any

other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “Docket No. CAA-HQ-2022-8420.”)

44. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
 - (d) (1) suspend or revoke Respondent’s licenses or other privileges, or (2) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
45. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

46. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
47. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
48. Except as qualified by Paragraph 44(a), each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

49. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations listed in Attachment A.
50. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
51. This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter hereof.

52. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board.
53. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$102,638 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
54. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
55. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
56. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall

give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

57. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of 3M Company, Docket No. CAA-HQ-2022-8420, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

November 29, 2021

Date

Printed Name: James R. Kotsmith

Title: Vice President, Corporate Environment

Address: 3M Center, Bldg. 224-5W-17, St. Paul, MN 55144

Respondent's Federal Tax Identification Number: 41-0417775

The foregoing Consent Agreement In the Matter of 3M Company, Docket No. CAA-HQ-2022-8420, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

1/20/22

Date

MARY GREENE

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GREENE
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Mary E. Greene
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of *3M Company*, Docket No. CAA-HQ-2022-8420, were sent to the following persons in the manner indicated:

By Electronic Mail:

Adam Kushner
Counsel for Respondent 3M Company
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004
e-mail: adam.kushner@hoganlovells.com

Jennifer Lee
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
e-mail: lee.jennifer@epa.gov

Dated: Feb 07, 2022



Emilio Cortes
Clerk of the Board