

United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance

AGREEMENT FOR TSCA COMPLIANCE AUDIT

The United States Environmental Protection Agency ("EPA") and Minnesota Mining and Manufacturing Company ("3M") enter into this Agreement for a Toxic Substances Control Act ("TSCA") Compliance Audit and, by consenting to the terms of this Agreement, agree to fully comply with it.

EPA and 3M agree to the following:

1. GENERAL PROVISIONS

a. The parties agree that violations reported or otherwise disclosed to EPA under, and in accordance with, this Agreement, and in accordance with applicable and consistent provisions of the Agency's Self-disclosure Policy ("SDP"), 60 Fed. Reg. 66706 (1995), shall be eligible for 100 percent mitigation of gravity-based penalties. The parties agree further that this Agreement is intended to serve the objectives of, and be interpreted in harmony with, the SDP. In the event of an actual or perceived conflict between the terms of this Agreement and of the SDP, however, the parties agree that the terms of this Agreement shall prevail and govern.

b. This Agreement and an appropriate final EPA determination in this matter ("Final Determination" - for example, a Notice of Determination or a Consent Order) shall be the complete settlement of all civil administrative claims and causes of action alleged or which could have been alleged under TSCA for all violations identified in

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3M's Final Audit Report. Compliance with this Agreement and the Final Determination shall not be a defense to any actions subsequently commenced by EPA with respect to any violations that are not identified in the Audit. Nothing in this Agreement or EPA's Final Determination is intended to, or shall be construed to, operate in any way to resolve any criminal liability of 3M.

c. For purposes of this Agreement and any subsequent proceeding without trial or adjudication of facts, 3M admits that EPA has jurisdiction over the subject matter of the terms of this Agreement and any materials submitted to EPA pursuant to this Agreement.

d. 3M waives its right to request a judicial or administrative hearing under TSCA § 16(a)(2)(A) on any issue of law or fact that has arisen or may arise regarding the application of TSCA to any violations that 3M reports and mitigates pursuant to this Agreement and that are covered by the Final Determination in this matter.

e. 3M neither admits nor denies that reporting and mitigation by 3M pursuant to Paragraph 2 of this Agreement constitute a violation of TSCA but nonetheless agrees to pay stipulated civil penalties in accordance with Paragraph 3.

2. AUDIT TERMS

a. 3M commits to conduct an internal compliance audit ("Audit"), in accordance with this Agreement and with the objectives and applicable provisions of EPA's SDP, to review and report on 3M's compliance with TSCA.

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b. The Audit shall cover TSCA §§ 4, 5, 6, 8, 12 and 13, excluding Good Laboratory Practices, and shall be divided into two concurrent audits.

c. Concurrent Audits

i. Systems Review Audit. The first concurrent audit shall be a comprehensive compliance management systems review, with representative sampling, of 3M business units subject to TSCA jurisdiction (approximately 24 separate business units).

(1) All products, intermediates, raw materials, and chemical substances fall within this corporate audit, excluding only business units and activities not subject to TSCA. Corporate labs, sales centers, and manufacturing sites will be covered only if and as time permits.

(2) This audit also shall evaluate the data integrity of each business unit's chemical information entered into the corporate chemical/regulatory databases, as this can affect 3M compliance systems.

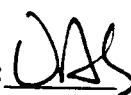
(3) 3M shall sample various products and intermediates within each business unit for compliance, as 3M shall determine.

ii. Nomenclature Audit. The second concurrent audit shall be a review of the TSCA nomenclature of all chemical reactions and polymerizations within 3M's Specialty Materials Markets Group ("SMMG") between January 1, 1994 and December 31, 1998.

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(1) This audit shall verify that all production steps representing chemical reactions or polymerizations, including both currently and formerly manufactured chemicals, conform to valid TSCA Inventory listings or premanufacture notification (“PMN”) exemptions, and that Notices of Commencement have been filed appropriately. Blending, mixing, distilling, drying, and other production steps where no changes in chemical identity occur are excluded from this audit.

(2) The audit shall use verification of process standards, production batch tickets, accounting data showing product structure, and similar data useful in determining the identity of manufactured products, including contact with relevant plant personnel.

(3) The foregoing information shall be verified against copies of Initial Inventory submissions, the current TSCA Inventory, copies of premanufacture and exemption notices, and the TSCA Inventory name assigned to specific SMMG products by EPA’s Office of Pollution Prevention and Toxic Substances’ Industrial Chemistry Branch.

(4) To facilitate closure of the Audit, at its discretion, EPA may limit to ten (10) the number of problem chemicals to be resolved within the scope of this Audit. If the Audit reveals the existence of more than ten (10) problem chemicals, the parties agree to consult regarding the need, if any, to negotiate a separate agreement at the conclusion of the Audit. A “problem chemical” is one that requires technical or

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regulatory review extending beyond the Audit deadline in order to determine Inventory status.

d. The Audit shall begin April 5, 1999 and end April 24, 2000 (a period of 12 months) and shall be conducted in accordance with the schedule in Appendix A.

e. On or before February 24, 2000 (during the 10th month of the Audit), 3M shall notify EPA in writing if 3M believes that it will be unable to complete the Audit by April 24, 2000. Based upon the then-current progress of the Audit, the Audit completion and Final Report due date may be renegotiated up to July 24, 2000 (a period of 15 months), but no later, except on subsequent agreement of the parties, as may be required by extraordinary, unforeseen events or circumstances.

f. The Audit shall cover the facilities listed in Appendix B. EPA agrees to include the self-disclosures listed in Appendix C within the scope of the Audit; these self-disclosures will not be deemed to be "prior violations" for the purposes of this Audit.

g. Audit Reports

i. *Periodic reports.* Within 30 days of discovery, 3M will submit to EPA a report disclosing any actual or potential violation and also will take the action necessary to mitigate it.

ii. *6-month report.* 3M will submit a 6-month status report and shall provide, in a cumulative fashion, a list of the products and business units reviewed for

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TSCA compliance, a summary of all violations discovered, and the actions taken to mitigate the violations.

iii. *Final report.* The Final Report shall be submitted no later than 60 days after the Audit completion date. The Final Report shall provide, in a cumulative fashion, a list of the products and business units reviewed for TSCA compliance, a summary of all violations discovered, and the actions taken to mitigate the violations. The Final Report also shall include a statement signed by a responsible corporate official certifying that the Audit has been conducted and is complete. A “responsible corporate official” means a president, corporate secretary or treasurer, vice-president in charge of a principal relevant business function of 3M, or any other official who performs similar level policy or decisionmaking functions for 3M.

h. Except as provided in Sub-paragraphs 2(h)(i) and (ii), 3M shall mitigate violations discovered within the scope of the Audit in accordance with the SDP. For purposes of mitigation under this Sub-paragraph, 3M shall submit required documents and information to the appropriate EPA Office, as defined in applicable EPA regulations or guidance, and shall submit a written notice of mitigation activity in the periodic report.

i. TSCA § 5(e) or § 5(f) violations: Take immediate steps to enter into compliance and to ensure future compliance. These violations shall not include violations of Significant New Use Rules (“SNURs”).

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ii. TSCA § 8(e) violations: Within 15 working days of discovery, submit a TSCA § 8(e) report.

i. Section 8(c) disclosures will be reviewed on a study-by-study basis to determine if the SDP's time requirements of "no prior violations" are met.

3. STIPULATED PENALTIES

a. 3M agrees to pay the following stipulated penalties for violations reported by 3M during the Audit that fail to meet the applicable conditions of the SDP and the terms of this Agreement. Unless otherwise specified below, violations are to be calculated per chemical and as "one day" rather than "per day" violations:

i. Violations of TSCA § 4 shall be assessed a \$10,000 penalty.

ii. Violations of TSCA §§ 5(e) and 5(f) shall be assessed a \$25,000 penalty for each applicable § 5(e) or § 5(f) order or rule. The stipulated penalties for violations of §§ (5)(e) and 5(f) are not subject to the maximum limit stated in Sub-paragraph 3(b).

iii. Violations of TSCA § 5 for substances for which EPA determines, based upon EPA's review of 3M's submissions under this Agreement, that a TSCA § 5(e) or § 5(f) order or rule would be appropriate, shall be assessed a penalty of \$15,000. Upon receipt of a real or mock PMN document submitted by 3M, EPA will provide to 3M a written certification of the substance's Inventory and § 5(e) or § 5(f) status as a precondition to imposing the appropriate stipulated penalty.

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iv. Violations of the TSCA § 5 PMN requirements for research and development chemicals, 40 C.F.R. §§ 720.36 and 720.78(b), shall be assessed a \$2,000 penalty.

v. All other violations of TSCA § 5 shall be assessed a \$10,000 penalty.

vi. Violations of TSCA §§ 8(a), 8(c), and 8(d) shall be assessed a penalty of \$10,000.

vii. Violations of TSCA § 8(e) shall be assessed as a single-day violation per study or reportable event in the following manner: \$15,000 per study or report involving effects in humans; and \$6,000 per other study or report. These stipulated penalties for violations of § 8(e) are not subject to the maximum limit stated in Sub-paragraph 5(b).

viii. Violations of TSCA § 12(b) that occur after the date of this Agreement shall be assessed a penalty in the amount of \$4,000. TSCA § 12(b) violations occurring on or before the date of this Agreement shall not be assessed a penalty.

ix. Violations of TSCA § 13 import certification requirements shall be assessed on a per-chemical basis. The assessed penalty shall be as follows: (a) \$1,000 where (i) 3M took delivery of the chemical directly from the U.S. Postal Service, a commercial broker, or other independent agent not acting on 3M's behalf, and (ii) the

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chemical is in compliance with TSCA §§ 5, 6, 7, and rules and orders thereunder; (b) \$6,000 for each chemical substance that was (i) formally brokered by 3M, a commercial broker, or other independent agent acting on 3M's behalf, and (ii) the chemical is in compliance with TSCA §§ 5, 6, 7, and rules and orders thereunder; and (c) \$10,000 for each chemical substance where the chemical does not comply with TSCA §§ 5, 6, 7, and rules and orders thereunder.

b. 3M's total maximum liability for stipulated penalties arising from violations discovered during the Audit (but excluding penalties for §§ 5(e), 5(f), and 8(e) violations) shall in no event exceed \$1,000,000, even if total stipulated penalties arising from violations discovered during the Audit otherwise would exceed that amount.

4. PAYMENT OF PENALTIES

a. Following completion of the Audit and 3M's submission of the Final Report, the parties shall consult in good faith regarding any Audit violations for which the Agency intends to assess a civil penalty, and EPA shall allow 3M an opportunity to explain its entitlement to penalty mitigation under the SDP or other relevant basis. Following such good-faith consultation and explanation, if EPA determines that Audit violations remain for which 3M must pay civil penalties, the Agency shall take the following actions:

i. EPA will present 3M with a civil Complaint and a Consent Agreement and Consent Order ("CACO") covering Audit violations identified in the

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Final Report for which 3M must pay stipulated penalties, Audit violations for which economic benefit has been assessed, and Audit violations for which no penalty has been assessed.

ii. 3M shall sign and return the Consent Agreement within 20 calendar days. If 3M does not return the signed Consent Agreement within 20 calendar days, EPA reserves its rights under TSCA § 16 to initiate an enforcement action for violations reported by 3M during the Audit.

iii. Upon receipt of the signed Consent Agreement, EPA will file the Complaint, will forward the CACO to the Agency's Environmental Appeals Board ("EAB"), and will send a copy of the completed CACO signature page to 3M.

iv. Upon execution of the CACO by the EAB, 3M will have 60 calendar days from its receipt of a copy of the executed CACO to pay any stipulated civil penalties.

b. The settlement of civil claims and civil causes of an action under the Audit shall include only those violations for which 3M does the following, in accordance with the applicable SDP conditions and the terms of this Agreement:

- (1) reports to EPA
- (2) mitigates, and
- (3) pays the stipulated penalty due, if any.

c. 3M shall not pay a gravity-based penalty for any violation of TSCA that

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meets all of the applicable SDP conditions and the terms of this Agreement; however, EPA may require 3M to pay an “economic benefits” penalty, provided that such penalty is calculated in accordance with then-established EPA policies and procedures for calculating the economic benefits of the type of TSCA violation involved. For purposes of future violations of TSCA, any submissions made pursuant to this Agreement will be “prior such violations” under and within the meaning of TSCA § 16.

5. NOTIFICATIONS

a. A responsible corporate official of 3M shall certify the Final Audit Report described in Sub-paragraph 2(g)(iii). The certification shall be in the following form:

To the best of my knowledge and belief after due inquiry, under penalty of law, I certify that the information contained in and accompanying this (fill in type of submission) is true, accurate, and complete.

and shall contain the date, the official’s signature, and the official’s title.

b. Except as otherwise provided in this Agreement, whenever this Agreement requires 3M to give notice or submit reports, information, certifications, or documents to EPA, such information shall be submitted to the following person and address:

Tony R. Ellis
Toxics and Pesticides Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, SW, #2245-A
Washington, D.C. 20460

By written notice to 3M, EPA may change the person and/or address listed above.

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c. Whenever this Agreement requires EPA to give notice or submit reports, information, certifications, or documents to 3M, such information shall be submitted to the following person and address:

Charles A. O'Connor, III, Esq.
McKenna & Cuneo, L.L.P.
1900 K Street, NW
Washington, D.C. 20006

By written notice to EPA, 3M may change the person and/or address listed above.

6. OTHER MATTERS

a. This Agreement shall not affect EPA's right to bring a claim or cause of action for a TSCA violation that was not settled by this Agreement and the Final Determination, including a claim or cause of action for a TSCA violation that could have been but was not reported, mitigated, and paid pursuant to this Agreement and the Final Determination.

b. This Agreement shall be binding upon all parties to this action, their officers, directors, employees, successors, and assigns. The undersigned representative of each party certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

c. This Agreement shall end when both parties have performed all of their respective obligations under this Agreement.

d. This Agreement may be modified by mutual written approval of EPA and 3M.

e. Both parties agree to bear their own costs and attorney fees in this matter.

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f. This Agreement shall be effective upon its having been signed by all of the persons identified below.

g. All of the terms and conditions of this Agreement together comprise one agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this Agreement (or one or more of its terms and conditions) is held invalid, then the entire Agreement shall be null and void.

h. 3M may assert claims of confidentiality under TSCA § 14 for submissions under this Agreement. All such assertions must be made in strict accordance with TSCA § 14 and EPA regulations thereunder.

WE AGREE TO THIS:

For U.S. EPA:

For 3M:

Jesse Baskerville
Jesse Baskerville, Director
Toxics and Pesticides
Enforcement Division

Dr. David Sonstegard
Dr. David Sonstegard
Vice President, Environmental
Technology and Safety Services
3M

Date: 6/16/99

Date: JUNE 7, 1999

Kathy M. Clark
Kathy M. Clark, Esq.
Counsel for U.S.
Environmental Protection Agency

Charles A. O'Connor, III, Esq.
Charles A. O'Connor, III, Esq.
McKenna & Cuneo, L.L.P.
Counsel for 3M

Date: 6/15/99

Date: 6/15/99

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APPENDIX A**3M TSCA Audit Schedule - 1999**

Industrial Tape Division	04/05/99
Adhesives Division	04/19/99
Commercial Graphics	05/03/99
Springfield, MO (Adhesives plant)	05/24/99
MEMORIAL DAY / <i>Follow-ups</i>	05/31/99
Abrasives Division	06/21/99
Bonding Systems	06/28/99
JULY 4 th / <i>Quarterly Follow-ups</i>	07/05/99
Stationery & Office Supplies	07/12/99
Automotive Systems	07/26/99
Automotive Ind. Center – Southfield, MI	08/09/99
Film – Pilot Plant (SMMD)	08/23/99
Film – Lab (Optical Systems Group)	
LABOR DAY / <i>Quarterly Follow-up</i>	09/06/99
Construction & Home Improvements	09/27/99
Automotive Aftermarkets	10/11/99
Specialty Matls. Mfg. – Cordova, IL	10/25/99
Adhesives & Chemicals	11/08/99
THANKSGIVING	11/22/99
Performance / Protective Materials Divisions (SMM, 3M Specialty Matls. Lab)	11/29/99
Specialty Matls. Mfg. – Cottage Grove, MN	12/13/99

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3M TSCA Audit Schedule - 2000

Audit Candidate	Start Date
<i>Qtr. Follow-up / Begin Year-end Report</i>	12/06/99
CHRISTMAS / NEW YEAR HOLIDAYS	01/03/00
Tape Manufacturing	01/10/00
Specialty Matls. Mfg. Div. – Decatur, AL	01/17/00
Optical Systems Division	02/01/00
Electronic Prod./Telcom – Austin, TX	02/14/00
Electronic Handling – Austin, TX	02/21/00
Industrial Mineral	03/06/00
To be determined	03/20/00
Specialty Media Products	04/10/00
Hutchinson – Tape	04/24/00

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APPENDIX B

3M Facilities Included In 3M TSCA Audit

3M Austin
6801 River Place Blvd.
Austin, TX 78726-9000

3M Austin
11705 Research Blvd.
Austin, TX 78759-2419

3M Springfield
3211 E. Chestnut Expressway
Springfield, MO 65802

3M Automotive Industry Center
22100 Telegraph Road
Southfield, MI 48034

3M Cottage Grove
10746 Innovation Road
Cottage Grove, MN 55016

3M Decatur
1400 State Docks Road
Decatur, AL 35609

3M Cordova
22614 Route 84 North
Cordova, IL 61242-9799

3M Center
Maplewood, MN 55144

APPENDIX CList of violations reported to EPA since January 1, 1998

- ✓ 1. **Manufacture in Cordova, IL of a substance not on the TSCA Inventory and not otherwise exempt from notification (Specialty Material Markets Group). Letter dated 2/20/98.**
- ✓ 2. **Failure to report production of pefluorooctylsulfonamide in Decatur, AL and of acetic acid in Cordova, IL for the 1994 Inventory Update Rule ("IUR") (Specialty Material Markets Group). Letter dated 10/27/98.**
- ✓ 3. **Failure to report production of carbon disulfide in Tonawanda, NY for the 1994 IUR and the 1994 Preliminary Assessment Information Rule (Home and Commercial Care Division). Letter dated 11/6/98.**
- ✓ 4. **Failure to report production of zinc resinate in St. Paul, MN and Bedford Park, IL for the 1994 IUR (Tape Manufacturing Division). Letter dated 11/24/98.**
5. **Submitting an incorrect TSCA import certification for a research-and-development substance (Traffic Control Materials Division). Letter dated 12/10/98.**
6. **Commercial use in Cumberland, WI of a substance not on the TSCA Inventory and not otherwise exempt from notification (Bonding Systems Division). Letter dated 12/22/98.**
- ✓ 7. **Processing in Brookings, SD of a specifically regulated substance in violation of EPA regulations (Electrical Products Division). Letter dated 1/6/99.**
- ✓ 8. **Manufacture in Cottage Grove, MN of two substances not on the TSCA Inventory and not otherwise exempt from notification (Specialty Material Markets Group). Letter dated 4/8/99.**
- ✓ 9. **Incorrect import certification in St. Paul, MN of laminating tape exempt from TSCA import certification requirements as an article (Bonding Systems Division). Letter dated 4/26/99.**
- ✓ 10. **Manufacture in Springfield, MO of a polyurethane polymer not on the TSCA Inventory and not otherwise exempt from notification (Automotive Aftermarkets Division). Letter dated 4/29/99.**
11. **Failure to report production of N-methylperfluorooctanesulfonamide in Decatur, AL for the 1994 and 1998 IUR (Specialty Materials Manufacturing Division). Letter dated 5/6/99.**

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