



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT - 9 2001

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA FACSIMILE

Ms. Julia Hatcher, Esq.
Latham & Watkins
Attorneys at Law
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2505

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Dear Ms. Hatcher:

As an aide in facilitating our discussion this afternoon, I am sending this letter (which includes some background information) and attachments. EPA is looking forward to resolving this matter with 3M in a timely manner.

Agreement for Toxic Substances Control Act (TSCA) Compliance Audit ("Audit Agreement")

In June 1999, 3M entered into a comprehensive Audit Agreement with EPA to be conducted under the auspices of the Agency's Self-disclosure Policy ("SDP"), 60 Fed. Reg. 66706 (1995) and the terms of the 3M/EPA negotiated Audit Agreement, committing to a comprehensive audit that included TSCA §§ 4, 5, 8, 12 and 13. This Audit Agreement included two concurrent TSCA Audits ("Audit") at 3M's major manufacturing facilities. The Audit included: 1) a comprehensive compliance management systems review of all 3M business units subject to TSCA jurisdiction, which was to cover approximately 24-28 separate business units and facilities (with representative sampling) and 2) a review of the TSCA nomenclature of all chemical reactions and polymerizations between January 1, 1994 - December 31, 1998.

The Audit was scheduled to begin April 24, 1999 and end April 24, 2000. The Audit Agreement included a clause for re-negotiating at the beginning of the 10th month for additional needed time, not to exceed 15 months for an Audit completion date and Final Report due date. 3M requested additional time to complete the Audit, which was extended until July 24, 2000. The Final Report due date was extended until September 24, 2000.

Within 30 days of discovery, 3M was to submit to EPA a report of any potential or actual violation and the action taken to mitigate it. A six-month status report was to provide a list of the products and business units reviewed for TSCA compliance, a summary of all discovered

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Exhibit
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State of Minnesota v. 3M Co.,
Court File No. 27-CV-10-28862

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violations, and the actions taken to mitigate the violations. The Final Report was to be cumulative, including the information from the six-month report and the same type of information for the latter six months. The Final Report was submitted to the Agency on September 24, 2000.

Penalties

It was agreed, as discussed in the SDP, that in the event EPA took enforcement action, EPA would not seek gravity-based (i.e., non-economic benefit) penalties from eligible facilities that met the conditions outlined in the SDP. If there was an actual or perceived conflict between the SDP and the terms of the Audit Agreement, the terms of the negotiated Agreement would prevail. Notwithstanding the Agreement, EPA reserved the right to take any action pursuant to any applicable authority.

3M also agreed to pay stipulated penalties for certain violations reported by 3M during the Audit that failed to meet the applicable conditions of the SDP and the terms of the Audit Agreement. Under the stipulated penalties provisions, penalties for violations were to be calculated generally as "per chemical" and as "one-day" rather than "per day" violations.

Economic benefit

"EPA retains its full discretion to recover any economic benefit gained as a result of noncompliance." 65 Fed. Reg. 19618, 19626 (Audit Policy). The Audit Agreement further included the provision that "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."

Disclosures- See Summary of Disclosures and DRAFT: Working Papers.

Pursuant to the negotiated Agreement, 3M submitted a total of 35 disclosures, including eleven voluntary disclosures EPA allowed to be included within the scope of the Audit for purposes of penalty mitigation (these self-disclosures were not deemed to be "prior violations" for the purposes of the Audit) and 3M's §8(e) Compliance Audit. EPA has determined that ten disclosures warranted no action; that in 11 disclosures the SDP/Audit Agreement terms were met and no gravity-based penalty is to be assessed; that in seven disclosures, no gravity-based penalties are to be assessed, but \$131,976 of economic benefit is to be recovered. (See BEN Runs). Economic benefit from two disclosures are still to be determined based on information necessary from 3M. Stipulated penalties total \$242,000 - \$20,000 NOC violations; Phase 1 - \$204,000 and Phase 2 - \$18,000.

On seven disclosures, EPA is seeking additional information concerning the illegal activity, dates of productions and amounts. Two disclosures lack sufficient information to make an assessment as to whether SDP terms have been met. EPA requests that 3M respond to each SDP term as it pertains to each individual self-disclosure so that a determination can be made as

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to whether the conditions have been met.

These assessments will be discussed more fully in following sections of this letter and in the Summary of Disclosures and DRAFT: Working Papers.

TSCA Section 8(e) Audit

Within the last 3-4 months of the Audit Agreement time period, 3M began a separate 3M TSCA §8(e) Compliance Audit ("§8(e) Audit") after OPPTS requested all 3M's information and studies concerning FCs and related compounds ("FCs"). Before the Final Report was due on September 24, 2000, 3M submitted thirty-one §8(e) FC violations (one disclosure) on August 21, 2000. 3M also expressed its intent to conduct two more phases of its §8(e) Audit. Phase 2 would continue to focus on FCs while Phase 3 would include non-FC related chemicals.

In June 2001, 3M submitted three additional FC violations under Phase 2 (one disclosure). It is EPA's current understanding that Phase 3 has been canceled.

These §8(e) disclosures do not meet all of the terms of the Audit policy because there was an EPA information request concerning these chemicals and these disclosures were not contemplated within the scope of the original Audit Agreement. As noted earlier, the Audit Agreement contained "stipulated penalties" for TSCA §8(e) violations disclosed during the Audit that did not meet the terms of the SDP or the Audit Agreement. (\$15,000 per human study; \$6,000 for other studies).

Since the 8(e) Audit was begun and violations were disclosed to TPED before the Final Report was due, EPA agrees to include these §8(e) disclosures related to this particular chemical and its compounds within the scope of the Audit Agreement under the 8(e) stipulated penalties provision. The Office of Pollution Prevention and Toxics has determined that the following self-disclosed studies are human studies:

- 1) Flurochemical Exposure Assessment of Decatur Chemical and Film Plant Employees, study date 8/11/1999
- 2) Analysis of FCs in Samples of Children's Sera, study date 05/21/1999

Phase One stipulated penalties include \$30,000 for the these two human studies and \$174,000 for the remaining 29 studies, for a total of \$204,000. Phase 2 stipulated penalties for three "other studies" are \$18,000. Total stipulated penalties for the self-disclosed TSCA §8(e) studies are \$222,000.

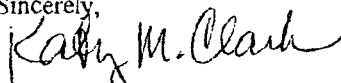
Next Steps

Upon receipt of the additional information necessary to determine whether conditions

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were met for the designated violations, EPA will determine economic benefit, if any, for those violations. EPA also requests the necessary information concerning production dates and amounts, as noted on the Working Papers chart. Again, EPA does appreciate 3M's willingness to self-disclose and to correct its violations. If you have any questions concerning this matter, please call me at (202) 564-4164 or Tony Ellis at (202) 564-4167.

Sincerely,



Kathy M. Clark

Enclosures

cc: Michael Nash, Esq.
Tony Ellis
Gerald Stubbs

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DRAFT

October 9, 2001

Summary of Disclosures made under the 3M/EPA Audit Agreement**35 Disclosures Made:**

- 10 No actions warranted
- 11 Audit Policy met (No Penalties)
- 9 Economic Benefit determinations for \$ 131,976 plus TBD
 - \$ 14,785
 - \$ 27,567
 - \$ 19,855
 - \$ 12,887
 - \$ 3,505
 - \$ 34,315
 - \$ TBD (two disclosures, one penalty)
 - \$ 19,062
- 3 Stipulated penalties for \$ 242,000
 - \$ 20,000 (NOC violations)
 - \$204,000 (8(e) Phase 1)
 - \$ 18,000 (8(e) Phase 2)
- 2 Additional information needed to support audit policy

Additionally, there are 7 disclosures that are captured above that the Agency is seeking additional information on concerning the illegal activity, dates of productions and amounts.

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DRAFT: Working Papers
Updated October 9 2001

DRAFT: Working Papers

3M Company

Disclosure Type	Date Disclosure made	Type of Violation	Proposed Penalty	Violation corrected?	Audit Policy Conditions Met?	Economic benefit?	Disposition or Status
SMMD	2/20/98	§ 5 PMN	\$ 40,000	Yes - Company ceased commercial mfg. and submitted a mock PMN for review (I-98-60)	Yes	Yes - \$14,785 (See Ben report)	Company requested and was granted enforcement discretion to distribute existing stocks. Although the company did submit a "mock" PMN, the company is subject to the delayed cost of submitting a PMN.
SMMD	4/8/99	§ 5 LVEA	Insufficient information to determine penalty (Need dates/ amounts from 1996 to 1999.)	Yes - Company submitted a LVEA, L-99-235.	Yes	Yes - \$27,567 (See Ben report)	Company did submit a LVEA but is subject to the delayed costs of submitting the LVEA.
SMMD	10/27/98	§ 8 IUR	\$ 0 No action warranted	Company omitted two chemicals to their 1994 IUR submission (Decatur, AL facility and Cordova, IL facility)	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus.
CSA #1 and CSA #2	11/6/98	§ 8 IUR/ § 8 PAIR	\$ 0 Previous NOD Issued	Company submitted their 1994 IUR form and PAIR form for carbon disulfide (Tonawanda, NY facility)	Yes	No	This disclosure was forwarded to Region II for action on 12/1/98. The Region issued a NOD for the violations on 3/17/99.
CSA #3 and CSA #4	11/24/98	§ 8 IUR	\$ 0 No action warranted	Company omitted one chemical to their 1994 IUR submission (Bedford Park, IL, and St. Paul, MN)	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus.

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CSA #5	12/10/98	§ 13 Improper cert. for a R&D product	\$ 1,430	Company corrected negative certification with a positive certification.	Insufficient information was provided to support audit policy.	No	The Agency considers the economic benefit from non-compliance to be de-minimus.
CSA #6	12/22/98	§ 5 illegal use	\$ 62,700	Company stopped illegal use. A PMN was subsequently submitted by another company.	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus
CSA #7	1/6/99	§ 5 SNUN	\$ 215,600	Company now complying with SNUR requirements.	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus
CSA # 8	4/26/99	§ 13 False cert.	N/A	No violation occurred.	N/A	N/A	Company submitted a negative certification when none was needed.
CSA # 9	4/29/99	§ 5 PMN	N/A	No violation occurred.	N/A	N/A	Chemical is on the TSCA Inventory as of 1994.
SMMD	5/6/99	§ 8 IUR	\$ 18,700	Company failed to submit the 1994 and 1998 IUR form for one chemical at the Decatur, AL site)	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus
CSA #10	5/11/99	§ 13 False cert.	N/A	No Violation occurred.	N/A	N/A	Company submitted a negative certification when none was needed.
CSA #11	5/20/99	§ 5 SNUN	\$ 495,000	Failed to comply with R&D requirements under 40 C.F.R. 721.47.	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus

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CSA #12	6/4/99	§ 12(b)	N/A	Company disclosed a potential 12(b) violation for an export that occurred on May 26, 1999 for Cas # 74-87-3	N/A	N/A	No Violation occurred. The 12(b) export notification requirement for this chemical was sunset on 7/30/94.
SMMD	6/8/99	§ 8 IUR	\$18,700	Company omitted one chemical to their 1998 IUR submission (Cottage Grove, MN)	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus.
SMMD	6/28/99	§ 5 PMN	Insufficient information to determine penalty. Needs batch dates and amounts from 1996 to 1999.	Yes - 3M submitted a PMN (P-99-1002).	Yes	Yes - \$19,855 (See Ben report)	Company requested and was granted enforcement discretion to distribute existing stocks. Although the company did submit a PMN, the company is subject to the delayed cost of submitting the PMN.
SMMD	7/22/99	§ 8 (NOC)	\$20,000	Company reported two late NOCs.	No* *Repeat violator \$20,000 Stip	N/A	Company had a previous TSCA violation (see TSCA 97-H-34). Company subject to stipulated penalties per the Audit Agreement Section 3(a)(vi).
SMMD	7/22/99	§ 5 PMN	Insufficient information to determine penalty. Need batch dates and amounts from 1996 to 1999.	Yes - 3M submitted a PMN (P-99-1229)	Yes	Yes - \$12,887 (See Ben report)	Company did submit a PMN and but is subject to delayed costs.

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SMMD	9/21/99	§ 5 LVEA	Insufficient information to determine penalty. Need batch amounts and dates from 1996 to 1999.	Yes - 3M submitted a LVEA L99-456 for this chemical.	Yes	Yes - \$ 3,505 (see Ben report)	Company requested and was granted enforcement discretion to distribute existing stocks. Although the company did submit a LVEA, the company is subject to the delayed cost of submitting the LVEA.
CSA #13	9/29/99	§ 5 PMN	\$ 480,000	Yes - The chemical was placed on the TSCA Inventory by another company (deleted) See P-(deleted) (NOC submitted by (deleted) on 6/17/99)	Yes	Yes - \$34,315 (see Ben report)	Company requested and was granted enforcement discretion to distribute existing stocks. Company avoided costs of submitting a PMN.
CSA #14 and CSA #15	11/4/99	§ 5 PMN or LVEA	\$ 14,300 Need to determine if LVEA or PMN was submitted.	Company stated that no further manufacture occurred (Final report)	Yes	Yes - Add't info needed	Unable to verify if a LVEA was submitted by the company. Need to check with company and OPPT. Avoidance or delayed costs.
SMMD	12/17/99	§ 5 PMN	N/A	Company submitted a LVEA but the Agency determined that the chemical was on the TSCA Inventory (according to company)	N/A	N/A	No Violation occurred.
SMMD	2/10/00	§ 8 IUR	\$18,700	Company incorrectly reported the wrong CAS# for a chemical substance to their 1998 IUR (Cottage Grove, MN)	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus.

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SMMD	4/24/00	§ 5		Nomenclature issue of several PMNs; unable to determine if violation has occurred.			3M has requested a correction of inventory listings to reflect intended chemical species (IC-5854). Need to check with company and OPPT on status of request.
SMMD	5/12/00	§ 5 LVEA	Insufficient information to determine penalty. Need batch amounts and dates from 1996 to 2000.	Yes - Company submitted a LVEA, L-00248.	Yes	Yes - \$19,062 (See Ben report)	Company did submit a LVEA but is subject to the delayed costs of submitting the LVEA.
CSA #16	6/2/00	§ 13 Failure to certify for R&D products	Insufficient information to determine penalty. Need approx number of imports from 1996 to 2000.	Company imported numerous R&D products without providing the necessary TSCA certifications to Customs	Yes	No	3M has provided the necessary guidance to personnel for future R&D imports requiring TSCA certifications. No past corrections is deemed necessary.
SMMD	6/12/00	§ 8 (IUR)	\$ 56,100	Company incorrectly reported the volume amounts of three chemicals for the 1998 IUR report (Cottage Grove, MN)	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus

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CSA # 17	7/7/00 3/30/01	§ 8(c)	\$1,804,000	Company reported 164 8(c) allegations that were not contained in the central file.	Yes	No	Economic gains from non-compliance is unknown.
POST FINAL REPORT	11/20/00	§ 5 (polymer exemption)	\$ TBD	Company failed to submit an exemption notification requirement.	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus
POST FINAL REPORT	12/26/00	§ 5 (polymer exemption)	\$ TBD	Company failed to submit an exemption notification requirement.	Yes	No	The Agency considers the economic benefit from non-compliance to be de-minimus
TSCA 8(e) PHASE I	8/21/00	§ 8 (e)	\$ TBD To be calculated	29 animal studies (\$6,000) 2 human health (\$15,000)	No \$ 204,000* *Stipulated penalties	N/A	Company did not meet the terms of the audit policy and are subject to the stipulated penalties of the 3M audit agreement.
TSCA 8(e) PHASE II	6/13/01	§ 8 (e)	\$ TBD To be calculated	3 animal studies (\$6,000)	No \$ 18,000* *Stipulated penalties	N/A	Company did not meet the terms of the audit policy and are subject to the stipulated penalties of the 3M audit agreement.