



Minnesota  
Pollution  
Control  
Agency

# Proposed Consent Order on PFCs

## A Summary of the Negotiations

May 2007

**The negotiated agreement meets and exceeds all of the needs expressed by the MPCA Board.**

At its April meeting, the Minnesota Pollution Control Agency (MPCA) Citizens' Board directed staff to attempt to negotiate a Consent Order (a legally binding agreement) with 3M on perfluorochemical (PFC) contamination in Minnesota. The Board directed staff to address seven concerns in the Order. MPCA staff believe they have reached an agreement with 3M that meets and exceeds the needs expressed by the Citizens' Board. The Board has received copies of the proposed Order, and is scheduled to consider approval at its regular May meeting. The issues, and how they are addressed in the proposed Order are summarized below:

### **1. A rigorous, robust cleanup plan**

The proposed Consent Order contains language that will result in excavation of contaminated material at the three sites (Cottage Grove facility, Woodbury Disposal Site and the Oakdale Disposal Site). The cleanup standard reflected in the proposed Consent Order is significantly more stringent than the normal cleanup standard required by the MPCA. The MPCA would have had the ability to pursue excavation under the Request for Response Action proposed earlier, however, the State would have faced a risk of litigation, resulting in delays in either cleanup or cost recovery.

Under the proposed Consent Order, waste that is removed will be

permanently controlled either through containment in an underground lined vault that meets all hazardous waste disposal standards, or by incineration. After waste is removed from contaminated areas, those areas will still be capped, and pump-and-treat systems will be installed to address any residual releases that may occur.

### **2. Recognition of Agency jurisdiction**

The proposed consent order has, as its legal foundation, the Minnesota Environmental Response and Liability Act (MERLA, the state Superfund law). While 3M reserves the right to disagree in other forums with the Agency's finding that MERLA applies, both parties agree that the Order is fully enforceable under MERLA.

### **3. Municipal and private drinking water supplies are addressed**

3M commits to provide alternative drinking water if and when a Health Based Value (HBV) or Health Risk Limit (HRL) is exceeded as a result of contamination from the sites. This commitment will also apply to the chemical PFBA when an HBV is issued for it. As with the rest of the agreement, this is an enforceable requirement of the proposed Consent Order.

Additionally, under the proposed Consent Order, the Agency has sufficient authority to require any groundwater investigation and

monitoring necessary to fully understand the extent of the contamination, including in aquifers used for drinking water.

#### **4. Address future actions on PFBA**

The proposed Consent Order requires 3M to investigate and remediate discharges of PFBA regardless of whether an HBV or HRL is issued for PFBA.

#### **5. Address additional studies on health and environmental effects**

The proposed Consent Order addresses this issue in two ways. Any needed research that is directly connected to releases of PFCs at 3M sites is fully reimbursable to the State. There is no limit to the amount that can be recovered under this provision.

Past costs associated with research on PFCs in the environment related to 3M sites are included in this agreement in the amount of \$598,692. This includes the Agency's work investigating the effects of PFCs as part of the Agency's development of water-quality criteria, which includes understanding aquatic toxicity (chronic and acute effects on fish and other biota), human health consumption impacts, and wildlife impacts (bioaccumulation impacts from eating fish). This work, which is ongoing, is fully reimbursable under the proposed Consent Order.

Additionally, the Order requires 3M to pay up to \$5 million over the next four years to the Agency for research costs on the presence and effects of PFCs found in the environment but not directly connected to 3M sites. An example of this work is the investigation of PFCs in urban lakes.

#### **6. Address cooperation from 3M on sharing research and information**

The proposed Consent Order requires 3M to fully cooperate with the Minnesota Department of Health and the MPCA on research, including a formal commitment to complete a 90-day study of health effects of PFBA. The proposed Consent Order also provides MPCA with full access to all non-privileged 3M documents on PFCs, and provision

of any such documents of interest to the Agency upon request.

#### **7. Preserve the Agency's right to take action in the future**

The proposed Consent Order preserves the Agency's right to take additional action in the future either due to new information that is not known at the time of the agreement, or if for any reason the agreement is deemed to be inadequate to protect public health and the environment.

#### **Additional items**

In the proposed Consent Order, 3M has agreed to contribute up to \$8 million to remediate the Washington County Landfill site. 3M is obligated to pay \$5 million up front to the Agency for this purpose, and, subsequently, up to half of the remaining cost of remediation or \$3 million, whichever is smaller. This site is managed under the State's Closed Landfill program, and 3M currently is under no legal obligation to address this site.

Also included in the proposed Consent Order is an agreement that the Agency does not waive its right to pursue any natural-resource damage claims related to releases of PFCs from the sites.

#### **Next steps**

The proposed Consent Order will be presented to the MPCA Board on May 22, 2007 for consideration and approval. If approved by the Board and signed by the Commissioner, it will be a legally binding agreement that will address the PFC contamination now and in the future.