

## STATEMENT OF CONSIDERATIONS

REQUEST BY 3M COMPANY ("3M") FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN PATENT RIGHTS UNDER DOE GRANT NO. DE-EE0000456; W(A) 2011-052

3M has requested a waiver of domestic and foreign patent rights of the United States of America in all subject inventions arising from its participation under the above referenced grant entitled "Durable Catalysts for Fuel Cell Protection during Transient Conditions." 3M is performing all the work under the grant.

The project funded under the grant is directed to the development of catalysts that will enable PEM fuel cell systems to weather the damaging conditions in the cells at voltages beyond the thermodynamic stability of water during the transient periods of start-up/shut-down cycles during the lifetime of the FC stack and satisfy the current 2010 and 2015 DOE targets for performance, durability and precious group metal loading.

The total anticipated cost of the grant is \$5,382,165 with 3M providing a 20% cost share. This waiver is contingent upon 3M maintaining, in aggregate, a cost sharing percentage of at least 20% during the course of the grant.

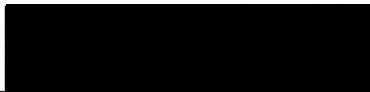
The period of performance for the grant is August 1, 2009 through July 31, 2013.

As noted in the waiver petition, 3M started its fuel cell program in 1995 and has become a recognized world leader in fuel cell component technology. It has significant technical competence, including numerous patents and patent applications and over six years of baseline research that covers the work under the project. 3M is a leading supplier of fuel cell MEA's to a wide range of customers, including research-oriented and commercial customers. 3M has made multi-million dollar investments in research and capital equipment related to fuel cell components and built an automated production line capable of high-speed, high-quality production of five-layer MEA's.

3M has agreed that this waiver shall be subject to the march-in and preference for U.S. industry provisions, as well as the U.S. Government license, comparable to those set out in 35 U.S.C. 202-204. Further, 3M has agreed to the attached U.S. Competitiveness Provision, paragraph (t). In brief, 3M has agreed that products embodying a waived invention or produced through the use of a waived invention will be manufactured substantially in the United States unless 3M can show to the satisfaction of the DOE that it is not commercially feasible to do so.

Referring to item 10 of the waiver petition, granting this waiver is anticipated to have a minimal effect on limiting competition. Competitors have developed and are likely developing competing technologies. Considering that the waived inventions are likely to be applicable only to 3M's proprietary technology, it is believed that the waiver will have no impact on the availability of these competing technologies. 3M believes any preferred position that it may achieve would be justified and based on its past and on-going investments, including significant investments outside of this grant, in the technology.

Considering the foregoing, it is believed that granting this waiver will provide 3M with the necessary incentive to invest its resources in commercializing the results of the grant in a manner that will make the above technology available to the public in the shortest time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver be granted.



Glen R. Drysdale  
Patent Attorney  
Golden Field Office

Date:



Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the United States and the general public will be best served by a waiver of patent rights of the scope determined above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of the grant, where through such modification or extension, the purpose, scope, or cost of the grant has been substantially altered.

CONCURRENCE:



Sunita Satyapal  
Program Manager  
Fuel Cell Technologies Program

Date: 

APPROVAL:



John T. Lucas  
Assistant General Counsel for Technology  
Transfer and Intellectual Property

Date: 



(t) U.S. COMPETITIVENESS

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.