

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6347-9]

**Proposed Settlement; Clean Air Act 112(r) Accidental Release Prevention Requirements: Risk Management Programs Litigation****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act" or "CAA"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement in *The Chlorine Institute v. EPA*, No. 96-1279 (D.D. Cir.) and consolidated cases (Nos. 96-1284, 96-1288, 96-1289 & 96-1290). These cases involve challenges to EPA's rule entitled "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act § 112(r)(7)," issued on June 20, 1996 at 61 FR 31668 (June 20, 1996).

Under the proposed settlement, the Environmental Protection Agency ("Agency" or "EPA") would take a number of actions. The major action

EPA would take would be to propose to amend its RMP regulations as they relate to the worst case release scenario for flammable substances that are normally gases at ambient temperature, but are handled as liquids due to refrigeration. Under the proposed amendment, when calculating the amount of such a substance, sources may assume and take into account any pooling of the liquefied substance into a "passive mitigation" system, where such pooling would occur at a depth greater than one centimeter. This change would make the treatment of refrigerated flammables consistent with the treatment of other liquefied substances under the rule. EPA would also publish language clarifying its understanding of CAA Sections 112(1) and 112(r)(11) as they relate to Department of Transportation requirements under the Hazardous Materials Transportation Act. Finally, EPA would also issue clarifying guidance on a number of issues raised by various parties. These issues are discussed in greater detail in the proposed settlement agreement and its attachments.

For a period of thirty (30) days following the date of publication of this

notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the proposed settlement agreement, which include relevant attachments, are available from Samantha Hooks, Air And Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-3804. Written comments should be sent to Nancy Ketcham-Colwill, (MC 2344), Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and must be submitted on or before June 16, 1999.

Dated: May 17, 1999.

**Lisa K. Friedman,**

*Acting General Counsel.*

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