

agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY-98 section 105 application, which EPA reviewed in the fall of 1997, the SDAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of \$12,361,507. This MOE at the time of the grant award was sufficient to meet the requirements of the CAA because it was higher than the actual FY97 MOE of \$12,356,625. Based on this information, EPA awarded SDAPCD its FY98 grant in February, 1998. In December of 1998, SDAPCD reported an actual FY98 MOE of \$12,050,625. This MOE level is not sufficient to meet the MOE requirements of the CAA because it is lower than the actual FY97 MOE, with a shortfall of \$306,000 between the MOE for FY97 and FY98. In order for the District to be eligible to keep its FY98 grant and to receive the additional EPA funding which has become available to SDAPCD for FY99, EPA must make a determination under section 105(c)(2).

The SDAPCD is a single-purpose agency whose primary source of funding is permit fee revenue. Fees associated with permits issued by the SDAPCD go directly to the district to fund its operations. It is the "unit of Government" for section 105(c)(2) purposes. The reason for the lower MOE level in FY98 is a series of efficiencies that SDAPCD has implemented over the past three years, resulting in decreased district costs while maintaining service levels. The SDAPCD submitted documentation to EPA which states that the district MOE reductions resulted from agency process streamlining and automation improvements. As a result, the SDAPCD's overall budget and its MOE decreased. The District shows that

it has been able to reduce its administrative expenditures in its programs through cost saving measures which do not affect the performance of its air programs or reduce its expenditures for substantive environmental program activities. For example, San Diego has reduced its expenditures by \$630,600 through streamlining measures including elimination of positions not required to perform these jobs. These cost saving measures were taken not because fee revenues had declined, but because San Diego wanted to operate more efficiently. This budget reduction has been non-selective in that all programs within SDAPCD have been impacted.

In summary, the SDAPCD's MOE reductions resulted from agency process streamlining, automation improvements, and position reductions, leading to decreased district costs while maintaining service levels. EPA proposes to determine that the SDAPCD's lower FY-98 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SDAPCD to keep the funds received from EPA for FY-98.

This document constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by April 7, 1999 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by April 7, 1999.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: February 25, 1999.

Matthew Haber,

Acting Director, Air Division, Region 9.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-6238-8]

Proposed Administrative Agreement and Covenant Not To Sue Under Section 122(h) of CERCLA for the David Chemical Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of administrative agreement and covenant not to sue under section 122(h) of CERCLA with Precision Chrome, Inc. for the David Chemical Superfund site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Administrative Agreement and Covenant Not to Sue Under section 122(h) of CERCLA ("Agreement"), 42 U.S.C. 9622(h), for the David Chemical Superfund Site located in Chicago, Illinois, has been executed by the Settling Party, Precision Chrome, Inc. ("Precision Chrome"). The proposed Agreement has been approved by the Attorney General's delegate. The proposed Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Precision Chrome. The proposed Agreement would require Precision Chrome to pay the EPA Hazardous Substance Superfund \$95,000 for reimbursement of response costs. No further EPA response actions are contemplated at this time.

DATES: Comments on the proposed Agreement must be received by EPA by April 7, 1999.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Ms. Orelia E. Merchant at (312) 886-2241, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Orelia E. Merchant, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C-14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Orelia E. Merchant at (312) 886-2241, of the U.S. EPA, Region 5, Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed Agreement pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i). Comments should be sent to the address identified in this notice.

William E. Muno,

Director, Superfund Division, Region 5.

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