

Administrative Facility Construction within the Monument Boundaries, Implementation, AZ.

*Summary:* EPA expressed environmental concerns due to potential impacts to surface/ground water quality from the existing septic tank system and construction-related activities and because the EIS did not reflect a range of feasible mitigation to reduce potential adverse impacts consistent with pollution prevention guidance.

*ERP No. D-USA-E11050-KY Rating LO,* Blue Grass Army Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility to Destroy the Chemical Agent and Munitions, Madison County, KY.

*Summary:* EPA has no objections to the demilitarization proposal or the various technologies which will be used to accomplish this proposal.

*ERP No. DS-AFS-L65232-OR Rating NS,* Deep Vegetation Management Project, Implementation, Additional Information on Four Alternatives, Ochoo National Forest, Paulina Ranger District, Crook and Wheeler Counties, OR.

*Summary:* EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

*ERP No. DS-FHW-D40295-WV Rating EC2,* New River Parkway Project, New and Relevant Information, Design, Construction and Management between I-64 Interchanges to Hinton, Raleigh and Summers Counties, WV.

*Summary:* EPA has environmental concerns regarding the mitigation measures proposed to offset the potential secondary and cumulative impacts likely to occur with project implementation. EPA requests additional information and details regarding the proposed measures.

#### Final EISs

*ERP No. F-AFS-D65024-PA,* Lewis Run Project, Management Strategies for Road Construction and Reconstruction, Timber Management Activities, Soil and Water Improvements, Wildlife Habitat Enhancements and Recreation Improvements, Implementation, Lewis Run Project Area, Bradford Ranger District, Allegheny National Forest, McKean County, PA.

*Summary:* EPA's prior comments on the draft EIS have been adequately addressed in this document. Therefore, EPA concurs with your analysis of impacts and findings.

*ERP No. F-AFS-L36113-WA,* Upper Charley Subwatershed Ecosystem

Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA.

*Summary:* EPA has no objection to the proposed action, as this document adequately responded to EPA's previous comments on the draft EIS.

*ERP No. F-AFS-L65382-ID,* Meadow Face Stewardship Pilot Project, Implementation, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F-FTA-L54004-WA,* Sound Transit, Lakewood-to-Tacoma Commuter Rail and WA-512 Park and Ride Expansion, Construction and Operation, Central Puget Sound Regional Transit Authority, City of Tacoma and City of Lakewood, WA.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: July 23, 2002.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7251-8]

### Proposed Settlement Agreement, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of two proposed settlement agreements. On July 15, 2002, the United States Environmental Protection Agency ("EPA") filed one settlement agreement with the United States Court of Appeals for the District of Columbia Circuit, and the other settlement agreement with the United States Court of Appeals for the First Circuit. These two settlement agreements address challenges to two separate final actions EPA took, determining that the one-hour ozone national ambient air quality standard ("NAAQS") no longer applied in different areas of the country. On August 8, 1998, Environmental Defense filed a petition for review pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b), challenging EPA's June 5, 1998 rule determining that the one-hour ozone NAAQS no longer applied in approximately 2000 counties across the

country. *Environmental Defense v. EPA*, No. 98-1363 (DC Cir.). On August 9, 1999, Appalachian Mountain Club filed a petition for review under section 307(b) of the CAA, challenging EPA's June 9, 1999, final rule determining that the one-hour ozone standard no longer applied in an additional ten areas. *Appalachian Mountain Club v. EPA*, No. 99-1880 (1st Cir.).

**DATES:** Written comments on the proposed settlement agreements must be received by August 26, 2002.

**ADDRESSES:** Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed settlement agreements are available from Phyllis J. Cochran, (202) 564-5566. On July 15, 2002, a copy of the proposed settlement agreement with Environmental Defense was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit and a copy of the proposed settlement agreement with Appalachian Mountain Club was filed with the Clerk of the United States Court of Appeals for the First Circuit.

#### SUPPLEMENTARY INFORMATION:

Environmental Defense and Appalachian Mountain Club (collectively referred to as "Petitioners") allege that EPA acted contrary to law by determining that the one-hour ozone standard no longer applied to the areas in the challenged actions.

The EPA promulgated the one-hour ozone standard in 1979. On July 18, 1997, EPA promulgated a revised ozone standard—the eight-hour ozone standard. At that time, EPA also promulgated a regulation providing that the one-hour standard would "no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard." 62 FR 38856, codified at 40 CFR 50.9(b) (revised on July 20, 2000). In part, EPA based this approach on its interpretation that the provisions of subpart 2 of part D of title I of the CAA applied only for purposes of the one-hour ozone standard. Thus, once an area attained the one-hour standard, EPA could determine the one-hour standard and thus, subpart 2, no longer applied to that area. Subsequently, EPA took three final actions in which it determined the one-hour standard no longer applied to most areas in the country. 63 FR 31014 (June 5, 1998); 63 FR 39432 (July 22, 1998); 64 FR 30911 (June 9, 1999). These actions are commonly referred to as "revoking" the one-hour standard.

The revised ozone standard was challenged and on May 14, 1999, the DC Circuit issued an opinion that, among other things, called into question EPA's authority to implement the revised standard. *American Trucking Assoc. v. EPA*, 175 F.3d 1027 (DC Cir. 1999). On rehearing, the Court made minor modifications to the portion of its decision regarding implementation, but did not change its earlier conclusions regarding EPA's implementation authority. *American Trucking Assoc. v. EPA*, 195 F.3d 4 (DC Cir. 1999). EPA sought review in the Supreme Court of several aspects of the DC Circuit's decision, including the ruling on EPA's implementation authority.

In the interim, due to the uncertainty regarding its implementation authority, on October 25, 1999, EPA proposed to reinstate the one-hour standard in all areas in which it had been revoked. 64 FR 57425. The preamble to that proposed rule provides a more thorough history of EPA's revocation rules and the DC Circuit rulings. See 64 FR at 57424-57425.

On July 20, 2000, EPA issued a final rule reinstating the one-hour standard in all areas in which it had been revoked. 65 FR 45182. EPA also modified the regulatory provision for determining the one-hour standard no longer applies to provide: "\* \* \* after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard."

On February 27, 2001, the Supreme Court issued a decision, remanding the implementation issue to the Agency to develop a reasonable interpretation that provides a role for subpart 2 in implementing the eight-hour ozone NAAQS.

Each Settlement Agreement provides that upon finalization of the Settlement Agreement, the Parties will jointly seek a stay of the litigation pending the following actions. First, no later than three months following the finalization of the Settlement Agreement, EPA will propose a stay of its authority under 40 CFR 50.9(b) to determine that an area has attained the one-hour standard and that therefore the one-hour standard no longer applies in that area. The basis for the proposed stay would be for EPA to consider through rulemaking whether this provision in 40 CFR 50.9(b) should be modified in light of the Supreme Court's decision in *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903 (2001). In that proposed stay, EPA would state that in the rulemaking

regarding whether that provision in 40 CFR 50.9(b) should be modified, EPA would take comment on which, if any, implementation activities for an eight-hour ozone standard, including designations and classifications, would need to occur before EPA would determine that the one-hour ozone standard no longer applied to an area, and the effect of revising the ozone NAAQS on existing designations for the pollutant ozone. EPA would take final action on its proposed stay no later than 6 months after the proposal is published in the **Federal Register**. Each Settlement Agreement provides for the Petitioners to dismiss their case if, consistent with the proposal, EPA's final action (a) stays the effectiveness of the provision in 40 CFR 50.9(b) regarding the determination of whether an area has met the one-hour standard until such time as EPA completes a subsequent rulemaking determining whether that provision should be modified; and (b) commits to consider and address in the subsequent rulemaking any comments concerning (i) which, if any, implementation activities for a revised ozone standard (including but not limited to designation and classification of areas) would need to occur before EPA would determine that the one-hour ozone standard no longer applied to an area, and (ii) the effect of revising the ozone NAAQS on existing designations for the pollutant ozone.

The sole remedy for the Petitioners under the Settlement Agreement is the right to ask the Court to lift the stay of proceedings and establish a schedule for further proceedings regarding the Revocation Rule.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Settlement Agreement will be final.

Dated: July 22, 2002

**Lisa Friedman,**

*Associate General Counsel.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7251-1]

### Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for Public Comment.

**SUMMARY:** The Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of Specialty Castings Corporation ("Settling Party") for response costs incurred and to be incurred at the Malvern TCE Superfund Site, East Whiteland and Charlestown Townships, Chester County, Pennsylvania, relating to the Malvern TCE Superfund Site ("Site").

**DATES:** Comments must be provided by August 26, 2002.

**ADDRESS:** Comments should be addressed to Joan A. Johnson (3RC41), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, and should refer to the Malvern TCE Superfund Site, East Whiteland Township, Chester County, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Joan A. Johnson (3RC41), Assistant Regional Counsel, 215/814-2665, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

**SUPPLEMENTARY INFORMATION:** Notice of *de minimis* Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Malvern TCE Superfund Site, in East Whiteland Chester County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice. This agreement has been approved by the Attorney General, United States Department of Justice, or his designee.

Specialty Castings Corporation ("Settling Party") has agreed to pay \$50 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public