



**WHEREAS**, for most facilities not subject to Current MSDS Requirements, Other Law requires that the owner or operator of such facilities advise local law enforcement, the fire department, and the local emergency response committees regarding the type, quantity, and location of Division 1.1 explosives on site;

**WHEREAS**, IME acknowledges that the failure of a facility to undertake the actions set forth in Sections 3(a)-(c) below would be inconsistent with IME's suggested safety practices;

**NOW, THEREFORE**, EPA and IME agree as follows:

1. Except as otherwise provided in this Settlement Agreement, all terms herein shall be defined in accordance with the CAA and regulations promulgated under the authority of the CAA.

2. For purposes of this Settlement Agreement, "Other Law" shall mean obligations arising under federal, state, and local laws and regulations other than CAA section 112 (r), and its implementing regulations.

3. IME member companies, at facilities that they own or control, shall:

a. Post at all normal access routes a sign which states "Danger. Never Fight Explosive Fires. Explosives are stored on this site. Call (Emergency Phone Number.)";

b. Whenever a Division 1.1 commercial explosives storage or manufacturing location is established at a temporary job site, immediately notify Local Emergency Planning Committees and other local authorities, such as fire departments and local law enforcement agencies, of the type, quantity, and location of any Division 1.1 explosive at that new site;

c. At new or existing Division 1.1 commercial explosive storage or manufacturing locations (not including any temporary job site) that are not already required by Other Law to prepare emergency response plans, and that have 5000 pounds or more of Division 1.1 explosives on site at any one time, prepare emergency response plans for such sites, notify Local Emergency Planning Committees and other local authorities, such as fire departments and local law enforcement agencies, of the type, quantity, and location of Division 1.1 explosives at the site, and provide such plans to local emergency responders. Such facilities also shall

respond to reasonable requests for information about the type, quantity, and location of any Division 1.1 explosive on site that may be made by those local authorities.

- d. IME member companies shall inform their customers of the contents of this Settlement Agreement, including the actions to be taken pursuant to section 3(a)-(c) above.

4. Consistent with its Charter, By-Laws, long-standing practice, and Other Law, IME will respond to reasonable requests from law enforcement agencies and emergency responders for information concerning the safe storage, distribution, and use of explosives.

5. IME will distribute to other non-IME commercial explosives manufacturers, distributors and users of which it has knowledge, a letter informing such manufacturers, distributors and users of the contents of this Settlement Agreement, including the actions to be taken pursuant to section 3(a)-(c) above.

6. The obligations set forth in this Agreement shall not substitute for, or supersede, any obligation on the same subject matter that is imposed by Other Law.

7. EPA intends to conduct notice-and comment rulemaking in accordance with CAA section 307(d) proposing that 40 C.F.R., section 68.130 be amended to remove Division 1.1 explosives from the list of regulated substances under CAA section 112(r) (i.e., “de-list” Division 1.1 explosives).

8. EPA will use its best efforts to sign a notice of proposed rulemaking on the issue described in Paragraph 7, no later than nine (9) months after the “Approval Date,” as defined in Paragraph 11 of this Settlement Agreement. After considering any public comments received, EPA will use its best efforts to sign a notice of final rulemaking on the issues described in Paragraph 7, no later than eighteen (18) months after the Approval Date.

9. The parties may extend the dates set forth in Paragraph 8, or otherwise modify this Settlement Agreement by written stipulation, executed by counsel for the parties.

10. The parties agree and acknowledge that final approval of this proposed Settlement Agreement is subject to the requirements of CAA section 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed agreement be given to the public, that the public shall have at least thirty (30) days to make any comments, and that the Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Settlement Agreement.

11. The Administrator shall cause notice of this Settlement Agreement requesting public comment thereon to be forwarded to the *Federal Register* for publication within 15 days

of execution of this Settlement Agreement by the parties. Within 30 days after the close of such public comment period, and after review of any public comments, the Administrator or the Attorney General, or their delegees, as appropriate, shall determine whether to consent to this Settlement Agreement. Unless such consent is withheld, the parties shall promptly thereafter move the Court, based on this Settlement Agreement, to stay further proceedings before the Court until the Settlement Agreement is implemented as provided in Paragraphs 7 and 8, or until further motion to the Court. For purposes of this Settlement Agreement, the date the parties file the finally-approved Settlement Agreement shall constitute the “Approval Date.”

12. Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to the Administrator by the CAA or by general principles of administrative law. Nothing in this Settlement Agreement shall be construed to require EPA to obligate or pay funds or in any other way to take action in violation of the Anti-Deficiency Act or any other applicable appropriations law.

13. Nothing in this Settlement Agreement shall be construed to limit or modify EPA’s discretion to alter, amend, or revise the regulations identified in Paragraph 7 from time-to-time or to promulgate superseding regulations.

14. Nothing in this Settlement Agreement shall be construed to limit or modify the applicability of CAA section 112(r)(1), 42 U.S.C. § 7412(r)(1), to any stationary source, as that term is defined in CAA section 112(r)(2).

15. In the event that EPA takes final agency action de-listing explosives within the time frames specified in Paragraph 8, IME and EPA shall promptly stipulate to the dismissal, with prejudice, of IME’s petition in Case No. 94-1276 in accordance with Rule 42 of the Federal Rules of Appellate Procedure. In addition, IME will not exercise whatever rights it may have to seek review of that final action pursuant to CAA section 307, or otherwise.

16. In the event EPA fails to perform its obligations under this Settlement Agreement, IME’s sole remedy (except as provided in Paragraph 17) shall be the right to reactivate this litigation. IME agrees to give EPA thirty (30) days’ notice prior to exercising its rights under this Paragraph, unless *sua sponte* action by the Court effectively precludes such notice from being given.

17. If EPA’s final action under Paragraph 8 does not amend 40 C.F.R. part 68 to delist explosives, IME may exercise whatever rights it may have to seek review of that final action pursuant to CAA section 307, or otherwise.

18. Except as expressly provided in this Settlement Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have. Each party will bear its own costs and attorneys’ fees, including but not limited to any costs of monitoring compliance

with this Settlement Agreement and participating in the rulemaking contemplated by this Settlement Agreement.

19. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to bind the respective parties to the terms of this Settlement Agreement, subject to the provisions of Paragraphs 11 and 12.

**For the United States Environmental Protection Agency and Carol M. Browner,  
Administrator:**

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