

RE: IRIS

To: All PMS
From: ROSICASETTLEMENT AGREEMENT

WHEREAS, on December 29, 1992, the United States Environmental Protection Agency (EPA) promulgated final regulations implementing the Early Reductions Program under section 112(i)(5) of the Clean Air Act, as amended (CAA), 42 U.S.C. § 7412(i)(5), 57 Fed. Reg. 61,970 (Dec. 29, 1992), and as part of that rulemaking, EPA promulgated a list of high risk hazardous air pollutants, pursuant to section 112(i)(5)(E) of the CAA, 42 U.S.C. § 7412(i)(5)(E);

WHEREAS, acrylic acid was included on the list of high risk hazardous air pollutants, based in part on the inhalation reference concentration (RfC) in EPA's Integrated Risk Information System (IRIS);

WHEREAS, IRIS is a database maintained by EPA of toxicological values for certain chemicals;

WHEREAS, the purpose of maintaining the IRIS system is purely informational, i.e., to make known to the public, and to make available for use by EPA staff and any other persons who wish to do so, the view of EPA scientists as to appropriate toxicological values;

WHEREAS, IRIS reference dose values are not promulgated through notice and comment rulemaking, and entry of a value in IRIS is not intended to have binding regulatory effect;

WHEREAS, on February 26, 1993, Basic Acrylic Monomer Manufacturers (BAMM) filed a petition for review of the final regulations in the United States Court of Appeals for the District of Columbia Circuit, BAMM v. EPA, No. 93-1179 (D.C.

Cir.), and Chemical Manufacturers Association (CMA) filed a similar petition for review on the same day, CMA v. EPA, No. 93-1178 (D.C. Cir.);

WHEREAS, on April 13, 1993, BAMM submitted an administrative petition to EPA to revise the RfC for acrylic acid and to delete acrylic acid from the list of high risk hazardous air pollutants;

WHEREAS, on April 15, 1993, the Court granted EPA's motion to consolidate the two petitions for review;

WHEREAS, one of the uncertainty factors applied to the RfC for acrylic acid in IRIS was a factor of three for lack of a two-generation reproductive study, and on January 15, 1994, BAMM submitted to EPA a new two-generation reproductive study of acrylic acid that was completed by BASF Corporation, under BAMM's sponsorship;

WHEREAS, on February 16, 1994, the IRIS RfC/RfD Work Group met and considered, among other things, the new two-generation reproductive study. The Work Group found that the new two-generation reproductive study meets the criteria for an adequate reproductive study and accordingly increased the RfC for acrylic acid by a factor of three. The increase in the RfC for acrylic acid by a factor of three is sufficient to propose removing acrylic acid from the list of high risk hazardous air pollutants;

AND WHEREAS, the parties wish to effect a settlement of BAMM v. EPA, No. 93-1179 (D.C. Cir.), without expensive and protracted litigation, without any admission of any issue of fact or law,

and without any waiver of any right or defense except as provided herein;

NOW THEREFORE, BAMM and EPA hereby agree as follows:

1. EPA agrees to issue a notice of proposed rulemaking as soon as practicable, but not later than June 15, 1994, proposing to remove acrylic acid from the list of high risk hazardous air pollutants.

2. EPA agrees to take final action on the proposal to remove acrylic acid from the list of high risk hazardous air pollutants by October 15, 1994. EPA retains discretion under 5 U.S.C. § 553(d) to make effective immediately any removal of acrylic acid from the list of high risk hazardous air pollutants.

3. EPA agrees to issue a guidance memorandum, which clarifies EPA's policy regarding the appropriate use of IRIS values in designating high risk hazardous air pollutants. Specifically, senior Office of Air and Radiation management will advise EPA Office of Air and Radiation staff that:

- a. the entry of a value on IRIS does not constitute rulemaking, is not entitled to conclusive weight, and does not make the value legally binding;
- b. IRIS values have not necessarily been subjected to external peer review, and there may be more recent, credible and relevant information available than is contained in IRIS; and
- c. if an outside party questions IRIS values during the course of an EPA proceeding (for example, during

the course of evaluating a hazardous air pollutant), EPA will consider all credible and relevant information before it in that proceeding.

The guidance memorandum will contain language in the form set forth in Appendix A hereto.

4. EPA agrees to distribute the guidance memorandum identified in Paragraph 3 no later than 60 days after the final approval of this Settlement Agreement. EPA agrees that the guidance document identified in Paragraph 3 will bear the signature of the Director of the Office of Air Quality and Standards.

5. The parties agree that they may extend the dates set forth in Paragraphs 1, 2 and 4, or otherwise modify this Settlement Agreement, by written stipulation executed by counsel.

6. Not later than the date this Settlement Agreement is lodged with the Court, BMM and EPA shall file a joint motion with the Court in BMM v. EPA, No. 93-1179 (D.C. Cir.), to sever that case and to stay all proceedings in that case pending completion of the actions identified in Paragraphs 2 and 3. This Settlement Agreement shall be appended to that joint motion.

7. Within seven days after EPA completes the actions identified in Paragraphs 2 and 3, BMM and EPA shall stipulate to the dismissal with prejudice of BMM v. EPA, No. 93-1179 (D.C. Cir.), in accordance with Rule 42 of the Federal Rules of Appellate Procedure. Each party shall bear its own costs and attorneys' fees, including but not limited to any costs or fees

of oversight of, monitoring compliance with, or implementation of, this Settlement Agreement and the rulemaking process identified in Paragraphs 1 and 2.

8. BMM's sole and exclusive remedy for any breach of this Settlement Agreement shall be the right to reactivate this litigation and to seek imposition of a schedule for briefing. BMM agrees to give EPA written notice thirty (30) days prior to exercising its rights under this Paragraph.

9. Except as expressly provided in this Settlement Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have. Nothing in this Settlement Agreement shall be construed to limit or modify (1) any substantive or procedural requirement under the CAA or any other provision of law, or (2) the discretion accorded EPA by the CAA, any other provision of law, or by general principles of administrative law.

10. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or revise the final action identified in Paragraph 2 or the guidance memorandum identified in Paragraph 3 from time to time, or to promulgate superseding final action, guidance or regulations. Nothing in this Settlement Agreement shall be construed to limit or modify any rights that BMM may have to challenge any such alterations, amendments, revisions or superseding final action, guidance or regulations.

11. If EPA issues a guidance memorandum in accordance with Paragraph 3, BMM and its member entities shall not exercise whatever rights they may have to seek judicial review of that guidance memorandum. BMM specifically reserves any rights it may have to contest EPA's use of IRIS values in other proceedings. If EPA takes final action removing acrylic acid from the list of high risk hazardous air pollutants, BMM and its member entities shall not exercise whatever rights they may have to seek judicial review of that final action.

12. The parties agree and acknowledge that final approval of this Settlement Agreement by EPA is subject to the requirements of section 113(g) of the CAA, 42 U.S.C. § 7413(g). That provision requires that the Administrator provide notice of any proposed settlement agreement in the Federal Register and provide a period of at least thirty (30) days following publication to allow persons who are not parties or intervenors in the litigation to comment in writing. The Administrator of EPA or the Attorney General, as appropriate, must consider any comments in deciding whether to consent to the agreement and may withdraw or withhold their consent to the settlement agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the CAA. Upon execution of this Settlement Agreement by all of the parties, EPA agrees to promptly forward to the Office of Federal Register for publication a notice of intent to enter into this Settlement

Agreement, in accordance with the requirements of section 113(g) of the CAA.

13. If no comments disclose facts or considerations which indicate that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the CAA, EPA and the Department of Justice shall promptly give final consent to this Settlement Agreement. If comments disclose facts or considerations which indicate that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the CAA, and EPA and the Department of Justice shall consider such comments. If, as a result of comments that disclose facts or considerations which indicate that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the CAA, EPA and/or the Department of Justice conclude that the Settlement Agreement should be approved only if changes are made to the Settlement Agreement, they shall promptly consult BAMM to seek concurrence in any changes. If BAMM concurs in the changes, EPA and the Department of Justice shall approve the Settlement Agreement. If the parties are unable to agree on modified language for the Settlement Agreement, then the Settlement Agreement shall not be approved.

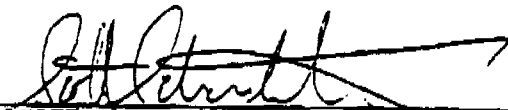
14. The undersigned representatives of each party certify that they are fully authorized by the party or parties they

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represent to bind the respective parties to the terms of this
Settlement Agreement.

DATE: 3/9/94


SCOTT A. SCHACHTER
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 23986
Washington D.C. 20026-3986
(202) 514-4632

DATE: 3/9/94


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Counsel for the United States
Environmental Protection Agency

DATE: March 9, 1994


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Counsel for Basic Acrylic Monomer
Manufacturers

APPENDIX A

IRIS is not a comprehensive toxicological database. There may be more recent, credible and relevant information available than is contained in IRIS. Moreover, IRIS values have not been adopted after notice and comment rulemaking and have not necessarily been subjected to external peer review. Accordingly, IRIS values are not entitled to conclusive weight and shall not be made legally binding. In addition, EPA or any state agency that uses IRIS should not rely exclusively on IRIS values but should consider all credible and relevant information that is submitted to the agency in any particular rulemaking. If an outside party questions IRIS values during the course of an EPA proceeding (for example, during the course of evaluating a hazardous air pollutant), EPA will consider all credible and relevant information before it in that proceeding.

CERTIFICATE OF SERVICE

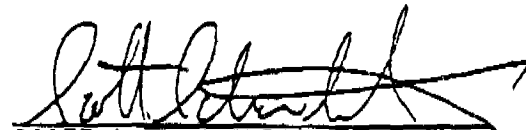
I hereby certify that on this 9th day of March 1994, I served the foregoing NOTICE OF LODGING OF PROPOSED SETTLEMENT AGREEMENT, by placing a copy in the U.S. mail, first class, postage prepaid, upon the following:

CMA

David J. Hayes, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington D.C. 20004

BAMMA

L. Mark Wine, Esquire
Kirkland & Ellis
655 15th Street, N.W., Suite 1200
Washington D.C. 20005



SCOTT A. SCHACHTER