

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-cv-01787-CMA-MEH

COLORADO CITIZENS AGAINST TOXIC WASTE, INC., a Colorado non-profit corporation,
and ROCKY MOUNTAIN CLEAN AIR ACTION, a Colorado non-profit corporation,

Plaintiffs,

v.

LISA P. JACKSON, in her official capacity as Administrator, Environmental Protection
Agency,

Defendant.

NOTICE OF SETTLEMENT AND JOINT MOTION FOR STAY

Notice is hereby given that the parties have executed a settlement agreement
("Agreement") in the above-captioned litigation, a copy of which is attached hereto.

In accordance with Paragraph 1 of the Agreement, the parties request that this case be
stayed pending the completion of the public involvement process under section 113(g) of the
Clean Air Act, as set forth in Paragraph 12 of the Agreement. The requested stay will allow for
the public notice and comment process to be completed without the need for further proceedings
before the court. A proposed order is provided as an exhibit to this motion.

In accordance with Paragraph 12 of the Agreement, after the section 113(g) public notice
and comment process is completed, EPA will notify the Plaintiffs whether the Administrator has
consented to the Agreement. If the Agreement is consented to by the Administrator and
becomes final, Plaintiffs will file a motion to administratively close this case under
D.C.Colo.LCivR 41.2, as provided for in Paragraph 2 of the Agreement. Plaintiffs' sole remedy
should the Administrator withhold her or his consent to the Agreement is the right to ask the

Court to lift the stay and establish a schedule for further proceedings. See Agreement, Paragraph 12.

RESPECTFULLY SUBMITTED THIS 3rd DAY OF SEPTEMBER 2009

s/Travis E. Stills

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s/Laurel A. Bedig

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on September 3, 2009, I electronically filed the foregoing "Notice of Settlement and Joint Motion for Stay" with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record for each party to this litigation at the following e-mail addresses:

laurel.bedig@usdoj.gov
stills@frontier.net
brad.bartlett@frontier.net

s/Travis E. Stills
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SETTLEMENT AGREEMENT

WHEREAS, the parties to this Settlement Agreement are the Plaintiffs in Colorado Citizens Against Toxic Waste and Rocky Mountain Clean Air Action v. Jackson, Civ. Action No. 08-cv-1787 (D. Colo.), and Defendant, Lisa P. Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency (hereinafter "EPA") (collectively, the "Parties");

WHEREAS, on August 21, 2008, Plaintiffs filed their complaint in the above-referenced case pursuant to section 304(a)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a)(2), alleging that EPA failed to perform a non-discretionary duty pursuant to CAA section 112(q)(1), 42 U.S.C. § 7412(q)(1), to review and, if appropriate, revise, 40 C.F.R. Part 61, Subpart W, National Emission Standards for Radon Emissions From Operating Mill Tailings, to comply with the requirements of CAA section 112(d), 42 U.S.C. § 7412(d);

WHEREAS, on October 24, 2008, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), EPA filed a motion to dismiss the Complaint on the basis that the Court lacks subject matter jurisdiction over the claims in the Complaint because they are time-barred by the six-year statute of limitations applicable in this case: 28 U.S.C. § 2401(a);

WHEREAS, on November 11, 2008, Plaintiffs filed a motion (1) to stay the briefing on EPA's motion to dismiss and (2) to allow Plaintiffs to conduct discovery regarding subject matter jurisdiction;

WHEREAS, on January 20, 2009, after full briefing on Plaintiffs' request for discovery, the Court issued an Order denying Plaintiffs' request except in one limited instance;

WHEREAS, on February 6, 2009, the Court issued an Order granting the Parties' joint request to Stay Proceedings and Set a Settlement Conference;

WHEREAS, Magistrate Judge Michael E. Hegarty presided over Settlement Conferences held on March 2, 2009, and June 4, 2009;

WHEREAS, the Parties wish to effectuate a settlement of Colorado Citizens Against Toxic Waste et al. v. Jackson, Civ. Action No. 08-cv-01787 (D. Colo.), without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement without admission of any issue of fact or law;

WHEREAS, the Parties consider this Settlement Agreement to be an adequate and equitable resolution of the claims in the above-referenced case;

WHEREAS, EPA has commenced review of 40 C.F.R. Part 61, Subpart W, National Emission Standards for Radon Emissions From Operating Mill Tailings (“Subpart W”); and

WHEREAS, the Parties agree this Settlement Agreement will provide expanded public participation opportunities during the review of Subpart W which will assist EPA in receiving and considering input during the substantive review of Subpart W.

NOW THEREFORE, the Parties agree as follows:

1. Within 10 business days from the date both Parties sign this Agreement, the Parties shall file a joint motion with the Court notifying it of this Agreement and requesting that this case be stayed pending completion of the process under section 113(g) of the Clean Air Act as set forth in Paragraph 12. This Agreement shall not become final and effective until EPA notifies Plaintiffs in writing, pursuant to Paragraph 12, that it consents to the Agreement following the public notice and comment process required by Clean Air Act section 113(g) as set forth in Paragraph 12.

2. Plaintiffs shall file a motion to administratively close this case under D.C.Colo.LCivR 41.2 within 10 business days of the date this Agreement becomes final pursuant to Paragraph 12. In the event that this motion is not granted, this Agreement is voidable at the election of either party. Plaintiffs shall file a motion for voluntary dismissal of the Complaint, with prejudice, pursuant to Fed. R Civ. P. 41(a), within 10 business days after publication in the Federal Register of EPA's promulgation of either: (1) EPA's issuance of a final determination not to revise Subpart W; or (2) EPA's promulgation of a final revision of Subpart W.

3. EPA agrees to take the following steps :

- a. Within 30 days of finalization of this Agreement pursuant to Paragraph 12, EPA will create a website dedicated to Subpart W which provides internet access to background information already compiled by EPA. During the ongoing Subpart W review, the website is intended to be used to provide public access to all non-privileged records, especially technical documents, which will be posted as soon as practicable after the date such agency records are created or obtained by EPA;
- b. Within 30 days of the finalization of this Agreement pursuant to Paragraph 12, EPA shall establish and post on the website, and thereafter maintain, a current estimate of a tentative timeframe for completing its review of Subpart W;
- c. Within 30 days of finalization of this Agreement pursuant to Paragraph 12, EPA shall post an announcement on the Subpart W website indicating that EPA invites and encourages the public to provide comments on its review of Subpart W;
- d. In addition to any other meetings it deems appropriate, prior to publication of a proposed rule regarding Subpart W, EPA shall provide at least four presentations, comprised of three in-person regional presentations and one internet seminar, regarding EPA's review of Subpart W, unless all parties agree otherwise, as follows:
 - i. A meeting on June 30, 2009 in Cañon City, Colorado;

- ii. A meeting at a date to be determined, but on or before June 30, 2010, to be held in Blanding, Utah, or a similar location near the Denison Mill at White Mesa, Utah;
 - iii. A meeting in conjunction with the Western Mining Action Network's semi-annual conference, which will take place October 1-4, 2009, in Rapid City, South Dakota;
 - iv. Final locations (e.g. facilities) and other details of the meetings referenced in the above three paragraphs will be negotiated between the parties as soon as practicable to enable the above-referenced meetings to be held;
 - v. The fourth presentation will be a nationwide internet seminar held on a date to be determined, but on or before June 30, 2010. Information regarding the date and time of this presentation, as well as how to participate, will be provided to Plaintiffs at least 20 days before the seminar and will be posted on the Subpart W website.
- e. EPA shall conduct quarterly call-in conference calls to brief the public on the status of its review of Subpart W, and to answer relevant questions the public may have regarding that review. The calls shall commence within 30 days after this Agreement becomes final, as indicated in Paragraph 12, and end when the Administrator takes final action regarding review of Subpart W. Except for the initial call, such calls will take place on the first Tuesday of the first month of the quarter at 11:00 a.m. Eastern Time, 9:00 a.m. Mountain Time. EPA shall provide the call-in number to the Plaintiffs at least five business days prior to the call via email.

4. The United States agrees to pay to Plaintiffs the sum of \$27,427.50 which the parties agree constitutes a reasonable resolution of Plaintiffs' claim for statutory costs and attorneys' fees. All other fees and costs shall be borne by the parties. Payment shall be accomplished by electronic transfer to EMLC's Colorado Lawyer Trust Account Foundation ("COLTAF") account within a reasonable time after this Agreement becomes final. Within two business days after this Agreement becomes final, Plaintiffs agree to provide the necessary account and routing information and the United States agrees that such information shall be held confidential and used only for purposes of accomplishing this transfer of funds.

5. Plaintiffs agree that performance of the obligations described in Paragraphs 3 and 4 shall constitute full and complete settlement of all claims that Plaintiffs have or could have asserted under any provision of law in connection with this case, including claims for attorneys' fees or other litigation costs as a result of this case.

6. In the event EPA fails to fulfill the obligations described in Paragraph 3 of this Settlement Agreement, Plaintiffs' sole and exclusive remedy shall be the right to move the Court to reopen Case No. 08-cv-01787 (D. Colo.). No such motion shall be properly filed unless the Plaintiffs have first provided EPA with a written notice outlining the nature of the failure to perform, and requested and conducted informal negotiations with EPA to resolve the dispute, at least 30 business days before the motion is filed. EPA shall provide a written response within 20 days of Plaintiffs providing such written notice.

7. Except as expressly provided in this Settlement Agreement, none of the Parties waives or relinquishes any legal rights, claims, or defenses it may have, including, without limitation, Plaintiffs' right to challenge any final determination made by EPA regarding Subpart W.

8. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the Plaintiffs' abilities to take separate actions to ensure that existing and proposed facilities are in compliance with Subpart W.

9. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA under the Clean Air Act or by general principles of administrative law.

10. Nothing in this Settlement Agreement shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the

United States Courts of Appeals, or waive any remedies or defenses the Parties may have, pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1), or otherwise.

11. The commitments by EPA in this Settlement Agreement are subject to the availability of appropriated funds. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate, expend, or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law or regulation, or otherwise take any action in contravention of those laws or regulations.

12. The Parties agree and acknowledge that final approval of this Settlement Agreement is subject to the requirements of section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g). That section 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. Therefore, within 10 business days from the date this Agreement is executed by the Parties, EPA shall submit this Agreement to the Federal Register for publication. The Administrator or the Attorney General, as appropriate, must consider any comments in deciding whether to consent to the Settlement Agreement and may withdraw or withhold her or his 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 Act. This Agreement shall become final on the date that EPA provides written notice of such finality to Plaintiffs. EPA shall provide such written notice within 60 days

after the notice of the Agreement is published in the Federal Register. Plaintiffs' sole remedy should the Administrator withhold her or his consent to the Settlement Agreement shall be the right to ask the Court to lift the stay of Civ. Action No. 08-cv-1787 (D. Colo.) and establish a schedule for further proceedings.

13. The undersigned representatives of each Party certify that they are fully authorized by the Parties they represent to bind the respective Parties to the terms of this Settlement Agreement. This Settlement Agreement will be deemed to be executed when it has been signed by the representatives of the Parties set forth below, subject to final approvals pursuant to Paragraph 12.

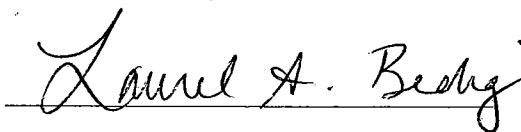
FOR PLAINTIFFS



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DATED: August 11, 2009

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DATED: August 21, 2009

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Defendant.

(PROPOSED) ORDER

Entered by Michael E. Hegarty, United States Magistrate Judge, on September __, 2009.

Having reviewed the notice of settlement and joint motion for stay filed by the parties, it is hereby **ORDERED** that this case is **STAYED** and that all further actions and filings in this matter shall be made in accordance with the terms of the attached Settlement Agreement.

Honorable Michael E. Hegarty