

1 GIDEON KRACOV (SBN 179815)
801 S. Grand Avenue, Ste. 1100
2 Los Angeles, CA 90017
Phone: (213) 629-2071
3 Fax: (213) 623-7755
Email: gk@gideonlaw.net
4

5 RICHARD TOSHIYUKI DRURY (SBN 163559)
Lozeau | Drury LLP
1516 Oak Street, Suite 216
6 Alameda, CA 94501
Phone: (510) 749-9102
7 Fax: (510) 749-9103
Email: richard@lozeaudrury.com
8 *Attorneys for Plaintiff*

9 JOHN C. CRUDEN
Acting Assistant Attorney General
10 Environment & Natural Resources Division
ROCHELLE L. RUSSELL (Cal. Bar. No. 244992)
11 Attorney, Environmental Defense Section
Environment & Natural Resources Division
12 United States Department of Justice
301 Howard Street, Suite 1050
13 San Francisco, CA 94105
Tel: (415) 744-6566
14 Fax: (415) 744-6476
Email: rochelle.russell@usdoj.gov
15 *Attorney for Defendants*

16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19 COMITE CIVICO DEL VALLE, INC.,)

20 Plaintiff,)

21 v.)

22 LISA JACKSON, in her official capacity as)
23 Administrator of the United States)
Environmental Protection Agency, and)
24 LAURA YOSHII, in her official capacity as)
Acting Regional Administrator for Region IX)
25 of the United States Environmental Protection)
Agency,)

26 Defendants.)
27)
28)

Case No. 09-cv-04095 PJH

CONSENT DECREE

1 WHEREAS, on September 3, 2009, Plaintiff Comite Civico Del Valle, Inc. filed the
2 above-captioned matter against Defendants Lisa Jackson, in her official capacity as
3 Administrator of the United States Environmental Protection Agency, and Laura Yoshii, in her
4 official capacity as Acting Regional Administrator for Region IX of the United States
5 Environmental Protection Agency (collectively, “EPA”), alleging that EPA has failed to
6 undertake certain nondiscretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-
7 7671q, and that such alleged failures are actionable under section 304(a)(2) of the CAA, 42
8 U.S.C. § 7604(a)(2);

9 WHEREAS, section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires States to
10 adopt and submit to EPA for review state implementation plans (“SIPs”), which establish
11 specific control measures and other requirements that apply to particular sources of air pollution
12 within a State and are designed to attain, maintain, and enforce National Ambient Air Quality
13 Standards established by EPA that specify the maximum permissible concentrations for those
14 pollutants in the ambient air, see 42 U.S.C. §§ 7408, 7409;

15 WHEREAS, section 110(k) of the CAA, 42 U.S.C. § 7410(k), sets forth the process by
16 which EPA is to review SIP submissions, including SIP revisions;

17 WHEREAS, Plaintiff’s complaint alleges that EPA has a nondiscretionary duty to act on
18 SIP submissions and revisions submitted to EPA within the time lines set forth in section
19 110(k)(2) of the CAA, 42 U.S.C. § 7410(k)(2);

20 WHEREAS, Plaintiff’s complaint alleges that EPA has failed to take timely final action
21 to approve, disapprove, or partially approve/disapprove the Imperial County Air Pollution
22 Control District Rules 800 through 806, which were submitted to EPA on or about June 16, 2006
23 and include measures to control particulate matter within the Imperial Valley (hereinafter,
24 “District Rules 800 through 806”);

25 WHEREAS, Plaintiff’s complaint seeks an order from this Court directing EPA to take
26 final action on District Rules 800 through 806 pursuant to section 110(k) of the CAA;

27 WHEREAS, the parties have agreed to a settlement of this action without admission of
28 any issue of fact or law;

1 WHEREAS, the parties, by entering into this Consent Decree, do not waive or limit any
2 claim or defense, on any grounds, related to any final EPA action;

3 WHEREAS, the parties consider this Consent Decree to be an adequate and equitable
4 resolution of all of the claims in this matter;

5 WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve
6 this matter without protracted litigation;

7 WHEREAS, the parties agree that this Court has jurisdiction over this matter pursuant to
8 the citizen suit provision in section 304(a)(2) of the CAA and that venue lies in the Northern
9 District of California;

10 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree is
11 fair, reasonable, in the public interest, and consistent with the CAA;

12 NOW THEREFORE, before the taking of testimony, without trial or determination of any
13 issue of fact or law, and upon the consent of the parties, it is hereby ordered, adjudged and
14 decreed that:

15 1. EPA shall sign for publication in the Federal Register no later than June 15, 2010
16 a notice of the Agency's final action on District Rules 800 through 806 pursuant to section
17 110(k) of the CAA. Once signed, EPA shall deliver the notice to the Office of the Federal
18 Register for publication.

19 2. When EPA's obligations under Paragraph 1 have been completed, the parties will
20 file a joint request to the Court to dismiss this matter with prejudice.

21 3. The parties may extend the deadlines established in Paragraphs 1 and 9 by written
22 stipulation executed by counsel for the parties and filed with the Court. In addition, subject to
23 the terms in Paragraphs 7 and 8, the deadlines established in Paragraphs 1 and 9 may be extended
24 by the Court upon motion by any party to this Consent Decree demonstrating that such extension
25 is consistent with the law and in the public interest, after consideration of any response by the
26 non-moving party.

27 4. Nothing in this Consent Decree shall be construed to limit or modify the
28 discretion accorded EPA by the CAA and by general principles of administrative law, including

1 the discretion to alter, amend or revise any response and/or final action contemplated by this
2 Consent Decree. EPA's obligation to take the action set forth in Paragraph 1 by the time
3 specified therein does not constitute a limitation or modification of EPA's discretion within the
4 meaning of this paragraph.

5 5. Nothing in this Consent Decree shall be construed to confer upon the district court
6 jurisdiction to review any decision made in the final action identified in Paragraph 1. Nothing in
7 this Consent Decree shall be construed to confer upon the district court jurisdiction to review any
8 issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant
9 to sections 307(b)(1) and 505 of the CAA, 42 U.S.C. §§ 7607(b)(1), 7661d.

10 6. This Court shall retain jurisdiction to enforce the terms of this Consent Decree
11 and to consider any requests for costs of litigation, including attorneys' fees.

12 7. In the event of a dispute between the parties concerning the interpretation or
13 implementation of any aspect of this Consent Decree, the disputing party shall provide the other
14 party with a written notice outlining the nature of the dispute and requesting informal
15 negotiations. If the parties cannot reach an agreed-upon resolution within ten (10) business days
16 after receipt of the notice, any party may move the Court to resolve the dispute.

17 8. No motion or other proceeding seeking to enforce this Consent Decree shall be
18 considered properly filed, unless Plaintiff has followed the procedure set forth in Paragraph 7 and
19 provided EPA with written notice received at least ten (10) business days before the filing of
20 such motion or proceeding.

21 9. EPA agrees that, pursuant to section 304(d) of the CAA, 42 U.S.C. § 7604(d),
22 Plaintiff is both eligible and entitled to recover its costs of litigation in this action, including
23 reasonable attorneys' fees, incurred prior to entry of this Consent Decree. The deadline for filing
24 a bill of costs pursuant to Local Rule 54-1 and a motion for costs of litigation, including
25 reasonable attorneys' fees, pursuant to Local Rule 54-6 for activities performed in this case prior
26 to entry of this Consent Decree, is hereby extended until 90 days after the date on which the
27 Court enters this Consent Decree. During this time the parties shall seek to resolve informally
28 any claim for costs of litigation, including reasonable attorneys' fees.

1 10. The obligations imposed upon EPA under this Consent Decree may only be
2 undertaken using appropriated funds. No provisions of this Consent Decree shall be interpreted
3 as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of
4 the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal law.

5 11. Plaintiff and EPA shall not challenge the terms of this Consent Decree or this
6 Court's jurisdiction to enter this Consent Decree.

7 12. The parties agree and acknowledge that before this Consent Decree is entered by
8 the Court, EPA must provide notice of this Consent Decree in the Federal Register and an
9 opportunity for public comment pursuant to section 113(g) of the CAA, 42 U.S.C. § 7413(g).
10 After this Consent Decree has undergone notice and comment, the Administrator and/or the
11 Attorney General, as appropriate, shall promptly consider any such written comments in
12 determining whether to withdraw or withhold their consent to the Consent Decree, in accordance
13 with section 113(g) of the CAA. If the Administrator and/or the Attorney General do not elect to
14 withdraw or withhold their consent, EPA shall promptly file a motion that requests the Court to
15 enter this Consent Decree.

16 13. Any notices required or provided for by this Consent Decree shall be made in
17 writing, via facsimile, e-mail or other means, and sent to the following:

18 For Plaintiff:

19 Gideon Kracov
20 801 S. Grand Avenue, Ste. 1100
21 Los Angeles, CA 90017
22 Phone: (213) 629-2071
23 Fax: (213) 623-7755
24 Email: gk@gideonlaw.net

25 For Defendants:

26 Rochelle L. Russell
27 U.S. Department of Justice
28 Environment & Natural Resources Division
29 Environmental Defense Section
30 301 Howard Street, Suite 1050
31 San Francisco, CA 94105
32 Phone: (415) 744-6566
33 Fax: (415) 744-6476
34 Email: rochelle.russell@usdoj.gov
35 Geoffrey Wilcox

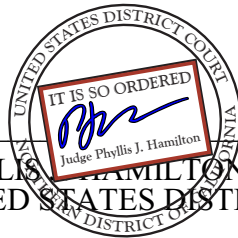
1 Office of General Counsel
2 U.S. Environmental Protection Agency
3 Ariel Rios Bldg., MC 2344A
4 1200 Pennsylvania Ave., N.W.
5 Washington, DC 20460
6 Phone: (202) 564-5601
7 Fax: (202) 564-5603
8 Email: wilcox.geoffrey@epa.gov

9 Jan Taradash
10 Office of Regional Counsel
11 U.S. Environmental Protection Agency
12 75 Hawthorne Street, ORC-2
13 San Francisco, CA 94105
14 Phone: (415) 972-3907
15 Fax: (415) 947-3570
16 Email: taradash.jan@epa.gov

17 14. The undersigned representatives of each party certify that they are fully authorized
18 by the party that they represent to bind that party to the terms of this Consent Decree.

19 **IT IS SO ORDERED.**

20 Dated: 1/29/10



21 PHYLLIS J. HAMILTON
22 UNITED STATES DISTRICT JUDGE

23 **COUNSEL FOR PLAINTIFF:**

24 Dated: November 10, 2009

25 /s/ Gideon Kracov (with permission)
26 GIDEON KRACOV
27 801 S. Grand Avenue, Ste. 1100
28 Los Angeles, CA 90017
Phone: (213) 629-2071
Fax: (213) 623-7755
Email: gk@gideonlaw.net

RICHARD TOSHIYUKI DRURY
Lozeau | Drury LLP
1516 Oak Street, Suite 216
Alameda, CA 94501
Phone: (510) 749-9102
Fax: (510) 749-9103
Email: richard@lozeaudrury.com

Attorneys for Plaintiff Comite Civico del Valle, Inc.

COUNSEL FOR DEFENDANTS:

Dated: November 10, 2009

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Rochelle L. Russell
ROCHELLE L. RUSSELL
Attorney, Environmental Defense Section
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105
Tel: (415) 744-6566
Email: rochelle.russell@usdoj.gov
Attorney for Defendants