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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 COMITE CIVICO DEL VALLE, INC.,

14 Plaintiff,

15 v.

16 LISA JACKSON, in her official capacity as
Administrator of the United States
17 Environmental Protection Agency, and
JARED BLUMENFELD, in his official
18 capacity as Regional Administrator for Region
IX of the United States Environmental
19 Protection Agency,

20 Defendants.
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Case No. 10-cv-02859-PJH

**NOTICE OF LODGING OF
PROPOSED CONSENT DECREE**

1 Defendants Lisa Jackson, in her official capacity as Administrator of the United States
2 Environmental Protection Agency, and Jared Blumenfeld, in his official capacity as
3 Administrator for Region IX of the United States Environmental Protection Agency
4 (collectively, "EPA"), hereby lodge with the Court a proposed consent decree that contains the
5 terms of a proposed settlement of this action. See Attachment 1, Consent Decree.

6 **The proposed consent decree should not be signed or entered by the Court at this**
7 **time.** Pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the EPA
8 Administrator must provide "a reasonable opportunity by notice in the Federal Register to
9 persons who are not named as parties or intervenors to the action or matter to comment in
10 writing" upon the proposed consent decree. Accordingly, EPA will publish in the Federal
11 Register a notice of the proposed consent decree and request comments. After a reasonable
12 comment period, the EPA Administrator will promptly consider any written comments received
13 and, if none of the comments disclose facts or considerations which indicate that the proposed
14 consent decree is inappropriate, improper, inadequate, or inconsistent with the requirements of
15 the Clean Air Act, Defendants will move for entry of the decree.

16 Respectfully submitted,

17 Dated: October 12, 2010

18 IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

19 /s/ Michelle R. Lambert
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CERTIFICATE OF SERVICE

On October 12, 2010, a true and correct copy of the foregoing Notice of Lodging of Proposed Consent Decree was served electronically via the Court’s e-filing system to Counsel of Record.

/s/ Michelle R. Lambert

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16 IN THE 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 JARED BLUMENFELD, in his official
25 capacity as Regional Administrator for Region
IX of the United States Environmental
26 Protection Agency,

27 Defendants.

Case No. 10-cv-02859-PJH

CONSENT DECREE

1 WHEREAS, on August 30, 2010, Plaintiff Comite Civico Del Valle, Inc. filed the first
2 amended complaint (“Complaint”) in the above-captioned matter against Defendants Lisa
3 Jackson, in her official capacity as Administrator of the United States Environmental Protection
4 Agency, and Jared Blumenfeld, in his official capacity as Regional Administrator for Region IX
5 of the United States Environmental Protection Agency (collectively, “EPA”), alleging that EPA
6 has failed to undertake a certain nondiscretionary duty under the Clean Air Act (“CAA”), 42
7 U.S.C. §§ 7401-7671q, and that such alleged failure is actionable under section 304(a)(2) of the
8 CAA, 42 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 Rule 217, which was submitted to EPA on or about August 24, 2007 and
23 includes measures to control particulate matter emissions from large confined animal facilities
24 within the Imperial Valley (hereinafter, “Rule 217”);

25 WHEREAS, Plaintiff’s Complaint alleges that EPA has failed to take timely final action
26 to approve, disapprove, or partially approve/disapprove the Imperial County Air Pollution
27 Control District Rules 201 and 202, which were submitted to EPA on or about August 24, 2007
28 and includes permitting requirements and exemptions within the Imperial Valley (hereinafter,

1 "Rule 201" and "Rule 202");

2 WHEREAS, Plaintiff's complaint seeks an order from this Court directing EPA to take
3 final action on Rules 201, 202, and 217 pursuant to section 110(k) of the CAA;

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

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

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

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

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

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

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

20 1. EPA shall sign for publication in the Federal Register no later than April 15, 2011
21 a notice of the Agency's final action on Rule 201 and Rule 202 pursuant to section 110(k) of the
22 CAA, and thereafter deliver the notice to the Office of the Federal Register for publication.

23 2. EPA shall sign for publication in the Federal Register no later than September 15,
24 2011 a notice of the Agency's final action on Rule 217 pursuant to section 110(k) of the CAA,
25 and thereafter deliver the notice to the Office of the Federal Register for publication.

26 3. When EPA's obligations under Paragraphs 1 and 2 have been completed, the
27 parties will file a joint request to the Court to dismiss this matter with prejudice.

28 4. The parties may extend the deadlines established in Paragraphs 1, 2, and 10 by

1 written stipulation executed by counsel for the parties and filed with the Court. In addition, the
2 deadlines established in Paragraphs 1, 2, and 10 may be extended by the Court upon motion by
3 any party to this Consent Decree for good cause shown, after consideration of any response by
4 the non-moving party.

5 5. Nothing in this Consent Decree shall be construed to limit or modify the
6 discretion accorded EPA by the CAA and by general principles of administrative law, including
7 the discretion to alter, amend or revise any response and/or final action contemplated by this
8 Consent Decree. EPA's obligation to take the action set forth in Paragraphs 1 and 2 by the time
9 specified therein does not constitute a limitation or modification of EPA's discretion within the
10 meaning of this paragraph.

11 6. Nothing in this Consent Decree shall be construed to confer upon the district
12 court jurisdiction to review any decision made in the final action identified in Paragraphs 1 or 2.
13 Nothing in this Consent Decree shall be construed to confer upon the district court jurisdiction to
14 review any issues that are within the exclusive jurisdiction of the United States Courts of
15 Appeals pursuant to sections 307(b)(1) and 505 of the CAA, 42 U.S.C. §§ 7607(b)(1), 7661d.

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

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

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

27 10. EPA agrees that, pursuant to section 304(d) of the CAA, 42 U.S.C. § 7604(d),
28 Plaintiff is both eligible and entitled to recover its costs of litigation in this action, including

1 reasonable attorneys' fees, incurred prior to entry of this Consent Decree. The deadline for filing
2 a bill of costs pursuant to Local Rule 54-1 and a motion for costs of litigation, including
3 reasonable attorneys' fees, pursuant to Local Rule 54-6 for activities performed in this case prior
4 to entry of this Consent Decree, is hereby extended until 90 days after the date on which the
5 Court enters this Consent Decree. During this time the parties shall seek to resolve informally
6 any claim for costs of litigation, including reasonable attorneys' fees.

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

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

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

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

24 For Plaintiff:

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

IT IS SO ORDERED.

Dated: _____

PHYLLIS J. HAMILTON
UNITED STATES DISTRICT JUDGE

COUNSEL FOR PLAINTIFF:

Dated: October 12, 2010

/s/ Gideon Kracov (with permission)
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Dated: October 12, 2010

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