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13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 SIERRA CLUB, ET AL.,

No. C 11-03106-JSW

18 Plaintiffs,

CONSENT DECREE

19 v.

20 JACKSON, ET AL.,

21 Defendants.
22
23

24 WHEREAS, on June 23, 2011, Plaintiffs Sierra Club and Medical Advocates for Healthy
25 Air ("Plaintiffs") filed the Complaint in the above-captioned matter against Defendants Lisa
26 Jackson, in her official capacity as Administrator of the United States Environmental Protection
27 agency, and Jared Blumenfeld, in his official capacity as Regional Administrator for Region 9 of
28 the United States Environmental Protection Agency (collectively, "EPA"), alleging that EPA has

1 failed to undertake certain nondiscretionary duties under the Clean Air Act (“CAA”), 42 U.S.C.
2 §§ 7401-7671q, and that such alleged failures are actionable under CAA section 304(a)(2), 42
3 U.S.C. § 7604(a)(2);

4 WHEREAS, CAA section 110(a)(1), 42 U.S.C. § 7410(a)(1), requires States to adopt and
5 submit to EPA for review state implementation plans (“SIPs”), which establish specific control
6 measures and other requirements that apply to particular sources of air pollution within a State
7 and are designed to attain, maintain, and enforce National Ambient Air Quality Standards
8 established by EPA that specify the maximum permissible concentrations for those pollutants in
9 the ambient air, *see* CAA sections 108 and 109, 42 U.S.C. §§ 7408, 7409;

10 WHEREAS, EPA is responsible for ensuring that SIPs comply with the CAA’s
11 requirements, and must approve or disapprove a SIP accordingly;

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

14 WHEREAS, Plaintiffs’ Complaint alleges that CAA sections 172(c)(1) and 182(b)(2) &
15 (f), 42 U.S.C. §§ 7502(c)(1) and 7511a(b)(2) & (f), require each state with an ozone
16 nonattainment area to submit a “demonstration” that existing industrial sources of the pollutants
17 that react to form ozone – volatile organic compounds and oxides of nitrogen – are subject to
18 regulations requiring reasonably available control technology (“RACT”) to reduce emissions;

19 WHEREAS, Plaintiffs’ Complaint alleges that EPA has a nondiscretionary duty to act on
20 SIP submissions and revisions submitted to EPA within the time lines set forth in CAA section
21 110(k)(2), 42 U.S.C. § 7410(k)(2);

22 WHEREAS, Plaintiffs’ Complaint alleges that EPA failed to take timely action under
23 CAA section 110(k)(2) on the RACT demonstration that was submitted to EPA on June 18, 2009
24 (“2009 RACT SIP”) by the California Air Resources Board and the San Joaquin Valley Unified
25 Air Pollution Control District (the “District”), and that EPA found complete on December 11,
26 2009;

27 WHEREAS, Plaintiffs’ Complaint further alleges that since EPA did not approve the
28 2009 RACT SIP within two years of EPA’s January 21, 2009 finding that the District had failed

1 to submit a RACT demonstration for the District's 2004 1-hour ozone plan, EPA was required to
2 promulgate a substitute federal implementation plan ("FIP") by January 21, 2011, providing for
3 the implementation of RACT on existing sources of volatile organic compounds and oxides of
4 nitrogen in the San Joaquin Valley;

5 WHEREAS, Plaintiffs' Complaint seeks an order from this Court directing EPA to (1)
6 take action on the Valley's 2009 RACT SIP on a specific timetable, and (2) promulgate a
7 substitute FIP providing for the implementation of RACT on existing sources of volatile organic
8 compounds and oxides of nitrogen in the Valley on a specific timetable;

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

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

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

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

17 WHEREAS, the parties agree that this Court has jurisdiction over this matter pursuant to
18 the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue lies
19 in the Northern District of California;

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

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

25 1. EPA shall sign for publication in the Federal Register:

- 26 (a) No later than September 15, 2012, for each source category for which
27 EPA's final action on the 2009 RACT SIP identifies a RACT deficiency, a
28 notice or notices approving a SIP rule in full, promulgating a FIP rule, or

1 approving a SIP rule in part and promulgating a FIP as necessary to fully
2 satisfy the RACT requirement in CAA section 182(b)(2) and (f), 42
3 U.S.C. § 7511a(b)(2) & (f), except as provided in subparagraph 1(b)
4 below.

5 (b) No later than April 15, 2013, for each source category described in
6 subparagraph 1(a), above, for which EPA has not approved a SIP rule but
7 has signed for publication in the Federal Register a proposed FIP rule by
8 September 15, 2012, a notice or notices approving a SIP rule in full,
9 promulgating a FIP rule, or approving a SIP rule in part and promulgating
10 a FIP as necessary to fully satisfy the RACT requirement in CAA section
11 182(b)(2) and (f), 42 U.S.C. § 7511a(b)(2) & (f).

- 12 2. Following signature on each notice described in Paragraph 1, above, EPA shall
13 deliver such notice(s) to the Office of the Federal Register for publication.
- 14 3. When EPA's obligations under Paragraphs 1 and 2 have been completed, the
15 parties will file with the Court a joint motion to dismiss this matter with prejudice.
- 16 4. The deadlines in Paragraphs 1 and 10 may be extended by (a) written stipulation
17 of Plaintiffs and EPA with notice to the Court, or (b) the Court upon motion of
18 EPA or Plaintiffs and upon consideration of any response by the other party.
- 19 5. Nothing in this Consent Decree shall be construed to limit or modify the
20 discretion accorded EPA by the CAA and by general principles of administrative
21 law, including the discretion to alter, amend or revise any response and/or final
22 action contemplated by this Consent Decree. EPA's obligation to take the actions
23 set forth in Paragraph 1 by the times specified therein does not constitute a
24 limitation or modification of EPA's discretion within the meaning of this
25 paragraph.
- 26 6. Nothing in this Consent Decree shall be construed to confer upon the district court
27 jurisdiction to review any decision made in the final actions identified in Paragraph 1. Nothing
28 in this Consent Decree shall be construed to confer upon the district court jurisdiction to review

1 any issues that are within the exclusive jurisdiction of the United States Courts of Appeals
2 pursuant to sections 307(b)(1) and 505 of the CAA, 42 U.S.C. §§ 7607(b)(1), 7661d.

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

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

10 9. No motion or other proceeding seeking to enforce this Consent Decree shall be
11 considered properly filed, unless Plaintiffs have followed the procedure set forth in Paragraph 8
12 and provided EPA with written notice of the dispute received at least ten (10) business days
13 before the filing of such motion or proceeding.

14 10. EPA agrees that pursuant to CAA section 304(d), 42 U.S.C. § 7604(d), Plaintiffs
15 are both eligible and entitled to recover their costs of litigation in this action, including
16 reasonable attorneys' fees, incurred prior to entry of this Consent Decree. The deadline for filing
17 a motion for costs of litigation, including reasonable attorneys' fees, is hereby extended until 90
18 days after the date on which the Court enters this Consent Decree. During this time the parties
19 shall seek to resolve informally any claim for costs of litigation, including reasonable attorneys'
20 fees.

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

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

27 13. The parties agree and acknowledge that before this Consent Decree is entered by
28 the Court, EPA must provide notice of this Consent Decree in the Federal Register and an

1 opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After
2 this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney
3 General, as appropriate, shall promptly consider any such written comments in determining
4 whether to withdraw or withhold their consent to the Consent Decree, in accordance with CAA
5 section 113(g). If the Administrator and/or the Attorney General do not elect to withdraw or
6 withhold their consent, EPA shall promptly file a motion – which Plaintiffs agree to join – that
7 requests the Court to enter this Consent Decree.

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

10 **For Plaintiffs:**

11 Paul Cort
12 Wendy S. Park
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15. The undersigned representatives of each party certify that they are fully authorized by the party they represent to bind that party to the terms of this Consent Decree.

COUNSEL FOR PLAINTIFFS:

Dated: December 19, 2012

/s/ Wendy S. Park
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Dated: January 4, 2012

/s/ Martin F. McDermott
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IT IS SO ORDERED.

Dated: _____

UNITED STATES DISTRICT JUDGE