

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 1:08-cv-00424-RWR
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY and)	
LISA P. JACKSON, Administrator,)	
United States Environmental Protection Agency,)	
)	
Defendants.)	
)	

NOTICE OF LODGING

Defendant Lisa Jackson, Administrator of the United States Environmental Protection Agency (“EPA”), with this notice lodges with the Court a proposed partial consent decree. The proposed consent decree should not be signed or entered by the Court at this time. Pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the consent decree is not final and cannot be entered by the Court until the EPA Administrator provides “a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action” to comment in writing upon the proposed decree. After a reasonable public comment period, the EPA Administrator and the Attorney General, as appropriate, must promptly consider any written comments received. Id. If the federal government elects not to withdraw or withhold consent to the proposed consent decree, EPA will promptly file a motion that requests

the Court to enter this Consent Decree.

Respectfully submitted,

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Assistant Attorney General
Environment and Natural Resources
Division

/s/ EILEEN T. MCDONOUGH
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UNITED STATES ENVIRONMENTAL)	
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)	
Defendants.)	
_____)	

CONSENT DECREE

WHEREAS, Plaintiff Serra Club filed this action pursuant to Clean Air Act (“CAA”) section 304(a)(2), 42 U.S.C. § 7604(a)(2), against Defendants United States Environmental Protection Agency and Lisa P. Jackson, Administrator (jointly referred to as “EPA”);

WHEREAS, the complaint alleges that EPA failed to perform a mandatory duty imposed by CAA section 112(e)(1)(E), 42 U.S.C. § 7412(e)(1)(E), to promulgate emission standards for hazardous air pollutant emissions from brick and structural clay products manufacturing facilities and clay ceramics manufacturing facilities located at major sources by November 15, 2000;

WHEREAS, this Court has ruled that it has jurisdiction over this action under CAA § 304(a)(2), 42 U.S.C. § 7604(a)(2), Memorandum Opinion and Order (Mar. 27, 2012) (Docket No. 24);

WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve Sierra Club’s claims without further litigation;

WHEREAS, Sierra Club and EPA have agreed to a settlement of Sierra Club's claims, without any admission or adjudication of fact or law, which they consider to be a just, fair, adequate and equitable resolution of said claims;

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of said claims;

WHEREAS, by entering into this Consent Decree, Sierra Club does not waive any claims and EPA does not waive any defenses, on any grounds, related to any matters asserted in this action that are not resolved by this Decree;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. No later than August 30, 2013, EPA shall sign a notice of proposed rulemaking to set national emission standards for hazardous air pollutants ("NESHAP") for brick and structural clay products manufacturing facilities located at major sources and clay ceramics manufacturing facilities located at major sources, pursuant to Clean Air Act § 112(d), 42 U.S.C. § 7412(d).

2. No later than July 31, 2014, EPA shall sign a notice of final rulemaking to set NESHAPs for brick and structural clay products manufacturing facilities located at major sources and clay ceramics manufacturing facilities located at major sources, pursuant to Clean Air Act § 112(d), 42 U.S.C. § 7412(d).

3. EPA shall deliver to the Office of the Federal Register for publication the notices of proposed and final rulemaking covered by this Decree no later than ten business days after signature of such notices. Following such delivery, EPA shall not take any action (other than as necessary to correct any typographical error or other errors in form) to delay or otherwise

interfere with publication of such notices in the Federal Register. In addition, EPA shall make available copies of said notices to Sierra Club within five business days after signature.

4. The deadlines in Paragraphs 1 and 2 above may be extended by written stipulation executed by counsel for EPA and Sierra Club and filed with the Court, or by the Court upon motion made pursuant to the Federal Rules of Civil Procedure by EPA and upon consideration of any response by Sierra Club and reply by EPA.

5. EPA agrees that Sierra Club is entitled to recover its costs of litigation (including attorneys' fees) ("litigation costs") incurred in this matter pursuant to 42 U.S.C. § 7604(d). The deadline for the filing of any motion for litigation costs for activities performed prior to the lodging of this decree with the Court is hereby extended for a period of 120 days. During this time the Parties shall seek to resolve informally any claim for litigation costs, and if they cannot reach a resolution, Sierra Club may seek such litigation costs from the Court. The Court shall retain jurisdiction to resolve any request for litigation costs. Sierra Club reserves its right to seek litigation costs for any work performed after the lodging of this Consent Decree. EPA does not concede that Sierra Club will be entitled to fees for any work performed after the lodging of the Consent Decree, and the parties reserve all claims and defenses with respect to any future costs of litigation claim.

6. Sierra Club and EPA shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

7. Sierra Club and EPA agree that this Consent Decree shall constitute a complete and final settlement of all claims that Sierra Club has asserted against the United States, including EPA, under any provision of law, in Sierra Club v. EPA, Case No. 1:08-cv-00424-RWR. Sierra Club therefore discharges and covenants not to sue the United States, including

EPA, for such claims. The Parties agree that this discharge and covenant not to sue shall not apply to any claim that may arise if any final rule signed pursuant to Paragraph 2 is vacated or withdrawn. EPA retains all rights and defenses, including jurisdictional challenges, in the event any such claim is filed by Sierra Club.

8. Nothing in this Consent Decree shall be construed to limit or modify any discretion accorded EPA by the CAA or by general principles of administrative law in taking the actions which are the subject of this Consent Decree, including the discretion to alter, amend, or revise any final actions contemplated by this Consent Decree. EPA's obligation to perform the actions specified by Paragraphs 1 and 2 does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

9. Nothing in this Consent Decree shall be construed as an admission of any issue of fact or law or to waive or limit any claim or defense, on any grounds, related to any final action EPA may take with respect to the rulemakings identified in Paragraphs 1 and 2 of this Consent Decree.

10. Nothing in this Consent Decree shall be construed to confer upon the district court jurisdiction to review any final decision made by EPA pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Court of Appeals pursuant to 42 U.S.C. § 7607(b)(1). Nothing in this Consent Decree shall be construed to waive any remedies or defenses the Parties may have under 42 U.S.C. § 7607(b)(1).

11. The Parties recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a

commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

12. Any notices required or provided for by this Consent Decree shall be made in writing and sent to the following:

For Plaintiffs:

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1625 Massachusetts Ave., NW, #702
Washington, D.C. 20036
(202) 745-5214
jpew@earthjustice.org

For Defendant:

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13. In the event of a dispute among the Parties concerning the interpretation or implementation of any aspect of this Consent Decree, the disputing Party shall provide the other Party with a written notice outlining the nature of the dispute and requesting informal negotiations. The parties shall meet and confer to attempt to resolve the dispute. If the Parties

cannot reach an agreed-upon resolution after ten (10) business days following receipt of the written notice, any Party may move the Court to resolve the dispute.

14. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of court shall be properly filed unless the Party seeking to enforce this Consent Decree has followed the procedure set forth in Paragraph 13.

15. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree, to resolve any disputes thereunder, and to consider any requests for costs of litigation (including reasonable attorneys' fees). After EPA's obligations under Paragraphs 1 and 2 have been completed, EPA may move to have this Consent Decree terminated. Sierra Club shall have 14 days in which to respond to such motion.

16. The Parties agree and acknowledge that before this Consent Decree can be finalized and entered by the Court, EPA must provide notice in the Federal Register and an opportunity for comment pursuant to Clean Air Act §113(g), 42 U.S.C. § 7413(g). EPA will deliver a public notice of this Consent Decree to the Federal Register for publication and public comment within 15 business days after lodging this Consent Decree with the Court. After this Consent Decree has undergone an opportunity for notice and comment, EPA's Administrator and the Attorney General, as appropriate, will promptly consider any such written comments in determining whether to withdraw or withhold consent to this Consent Decree, in accordance with section 113(g) of the Clean Air Act. If the Administrator or the Attorney General elects not to withdraw or withhold consent to this Consent Decree, the Parties will promptly file a motion that requests the Court to enter this Consent Decree.

17. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by the Parties and that any and all rules of construction to the effect that ambiguity is

construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

18. The undersigned certify that they are fully authorized by the Party or Parties they represent to bind that Party or those Parties to the terms of this Consent Decree.

SO ORDERED this ____ day of _____, 2012.

HON. RICHARD W. ROBERTS
UNITED STATES DISTRICT JUDGE

SO AGREED:

FOR PLAINTIFFS

/s/ James S. Pew
JAMES S. PEW
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FOR DEFENDANT

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