

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

SIERRA CLUB and WILDEARTH)	
GUARDIANS,)	
)	
Plaintiffs)	
)	
v.)	
)	Civil Action No. 1:10-cv-133(PLF)
LISA JACKSON, in her official capacity as)	
Administrator, U.S. Environmental Protection)	
Agency,)	
Defendant.)	

NOTICE OF LODGING PROPOSED CONSENT DECREE

PLEASE TAKE NOTICE that the United States submits for lodging only with this Court a proposed consent decree in this case. The proposed consent decree should not be filed or entered by the Court unless the United States subsequently moves this Court to do so.

1. This is a Clean Air Act citizen suit in which Sierra Club and WildEarth Guardians (“Plaintiffs”) allege that defendant Lisa Jackson, Administrator of the U.S. Environmental Protection Agency (“EPA”), has failed to perform a duty mandated by section 110(k)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7410(k)(2), to take final action on the State Implementation Plan (“SIP”) infrastructure submittals for Maine, Rhode Island, Connecticut, New Hampshire, Alabama, Kentucky, Mississippi, South Carolina, Wisconsin, Indiana, Michigan, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming with regard to the 1997 8-hour ozone National Ambient Air Quality Standards.

2. Subject to the provisions of section 113(g) of the CAA, 42 U.S.C. § 7413(g), as

described below, Plaintiffs and EPA have resolved the claims in this case, and have set forth their agreement in the proposed consent decree that is being submitted to the Court herewith for lodging only.

3. Pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), before the consent decree can be finalized and entered by the Court, the EPA Administrator must provide “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 must promptly consider any written comments received. Id.

4. If none of the comments discloses facts or considerations which indicate that the consent decree is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act, the Administrator will request the Court to enter the consent decree. Id.

5. A copy of the proposed consent decree is attached hereto as Exhibit A. The United States anticipates that the notice of the Consent Decree will be published in the Federal Register within the next several days or weeks.

6. The proposed Consent Decree addresses Plaintiffs’ allegations by requiring EPA to take action by a certain date as set forth in the Consent Decree. Compliance with the proposed Consent Decree will be complete when the actions listed in paragraphs 4-5 are performed. Paragraph 8 provides for the Court to retain jurisdiction to determine and effectuate compliance with the Consent Decree. EPA will move to have the Decree terminated when it can demonstrate that it has satisfied all of its obligations, and Plaintiffs will have twenty days to respond to such a motion.

Accordingly, the United States respectfully requests that this Court lodge the proposed consent decree, but not file it. The United States will make an appropriate motion promptly after evaluating any public comments received during the public comment period.

Respectfully submitted,

IGNACIA S. MORENO
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Environment and Natural Resources Division

/s/ Christina L. Richmond
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Dated: April 29, 2010

CERTIFICATE OF SERVICE

I, Christina L. Richmond, certify that on April 29, 2010, the foregoing Notice of Lodging of Proposed Consent Decree was filed through the Court's electronic filing system, which will provide electronic notice to the following counsel:

Robert Ukeiley
Law Office of Robert Ukeiley
435R Chestnut Street, Suite 1
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Tel: (859) 986-5402

/s/ Christina L. Richmond
Christina L. Richmond

EXHIBIT A

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

SIERRA CLUB and WILDEARTH GUARDIANS,)	
)	
Plaintiffs)	
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v.)	
)	Civil Action No. 1:10-cv-133(PLF)
LISA JACKSON, in her official capacity as Administrator, U.S. Environmental Protection Agency,)	
Defendant.)	
)	

CONSENT DECREE

WHEREAS, plaintiffs Sierra Club and WildEarth Guardians (“Plaintiffs”) filed a First Amended Complaint in this action in the United States District Court for the District of Columbia on January 27, 2010;

WHEREAS, Plaintiffs’ complaint alleged that defendant Lisa Jackson, Administrator of the U.S. Environmental Protection Agency (“EPA”), has failed to perform a duty mandated by section 110(k)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7410(k)(2), to take final action on the State Implementation Plan (“SIP”) infrastructure submittals for Maine, Rhode Island, Connecticut, New Hampshire, Alabama, Kentucky, Mississippi, South Carolina, Wisconsin, Indiana, Michigan, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming with regard to the 1997 8-hour ozone National Ambient Air Quality Standards;

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

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of all claims raised in this action.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has subject matter jurisdiction over the claims set forth in the complaint and to order the relief contained in this Consent Decree.
2. Venue lies in the United States District Court for the District of Columbia.
3. Plaintiff and EPA shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Upon entry, no party shall challenge the terms of this Consent Decree.
4. No later than April 29, 2011, the Administrator or her authorized delegatee shall sign a notice or notices, pursuant to section 110(k)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7410(k)(2), either approving, disapproving, or approving in part and disapproving in part, the 1997 8-hour ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, New Hampshire, Alabama, Kentucky, Mississippi, South Carolina, Wisconsin, Indiana, Michigan, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming.
5. Within 15 business days following signature of such action required by paragraph 4, EPA shall deliver notice of such action to the Office of the Federal Register for publication. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submittal any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register.

6. Any dates set forth in this Consent Decree may be extended by written agreement of the parties and notice to the Court. To the extent the parties are not able to agree to an extension, either party may move the Court to resolve the dispute.

7. The deadline for filing a motion for costs of litigation (including attorneys' fees) for activities performed prior to execution of this Decree is hereby extended until 60 days after this Decree is entered by the Court. During this 60-day period, the Parties shall seek to resolve informally any claim for costs of litigation (including attorneys' fees), and if they cannot, will submit that issue to the Court for resolution. Nothing in this paragraph shall be construed as an admission or concession by EPA that Plaintiffs are entitled to or eligible for recovery of any costs or attorneys' fees.

8. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. Upon EPA's demonstration that it has satisfied all of the obligations of this Consent Decree it may move to have this decree terminated. Plaintiffs shall have twenty days in which to respond to such motion.

9. Nothing in this Consent Decree shall be construed to limit or modify any discretion accorded EPA by the Clean Air Act or by general principles of administrative law in taking the actions which are the subject of this Consent Decree.

10. The parties agree and acknowledge that final approval and entry of this proposed Consent Decree are subject to the requirements of Clean Air Act § 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed Decree be given to the public, that the public shall have a reasonable opportunity to make any comments, and that the Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Consent Decree.

11. Nothing in the terms of this Consent Decree shall be construed to waive any remedies Plaintiffs may have under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

12. In the event of a dispute between the parties concerning the interpretation or implementation of any aspect of this Consent Decree, the disputing party shall contact the other party to confer and attempt to reach an agreement on the disputed issue. If the parties cannot reach an agreed-upon resolution, then either party may move the Court to resolve the dispute.

13. EPA's commitments in this Decree are subject to the availability of appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341 or any other applicable law or regulation.

14. The undersigned representatives of each party certify that they are fully authorized to consent to the Court's entry of the terms and conditions of this Consent Decree.

Respectfully submitted,

Dated: _____

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Counsel for Plaintiffs

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Dated: _____

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Counsel for Defendant

IT IS SO ORDERED.

Dated: _____

PAUL L. FRIEDMAN
United States District Judge