

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

_____)	
SIERRA CLUB,)	
)	
Plaintiff,)	
)	Civil Case No. 1:12-cv-00012 (CKK)
v.)	
)	
LISA P. JACKSON, in her official)	
capacity as Administrator, UNITED)	
STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, on March 2, 2012, Plaintiff Sierra Club filed a First Amended Complaint in this matter against Defendant Lisa P. Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency (hereinafter, "EPA" or "the Agency"), alleging that EPA has failed to undertake certain nondiscretionary duties under the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and that such alleged failure is actionable under section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2);

WHEREAS, Sierra Club's First Amended Complaint alleges that EPA has failed to perform a duty mandated by CAA sections 110(k)(2) and (3), 42 U.S.C. §§ 7410(k)(2) and (3), to take timely final action to approve, disapprove, or partially approve/disapprove portions of Texas' state implementation plan for the Houston-Galveston-Brazoria ("HGB") and Dallas-Fort Worth 1997 8-hour ozone nonattainment areas;

WHEREAS, the Parties wish to effectuate a complete and final settlement of Sierra Club v. Jackson, Case No. 12-cv-00012 (D.D.C.), without expensive and protracted litigation and

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without the admission of any issue of fact or law;

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

WHEREAS, the Parties consider this Consent Decree to be an adequate and equitable resolution of all of the claims in the above-captioned case;

WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree is fair, reasonable, in the public interest, and consistent with the CAA, 42 U.S.C. §§ 7401-7671q;

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of law or fact, and upon the consent of the Parties, it is hereby ORDERED,

ADJUDGED and DECREED that:

1. This Court has subject matter jurisdiction over the claims set forth in the First Amended Complaint and to order the relief contained in this Consent Decree. Venue is proper in the United States District Court for the District of Columbia.

2. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), the appropriate EPA official shall no later than the dates listed in Column A below, sign for publication in the Federal Register a notice or notices of the Agency’s proposed action approving, disapproving, or approving in part and disapproving in part the SIP submittals submitted by Texas, and no later than the dates listed in Column B below, sign for publication in the Federal Register a notice or notices of the Agency’s final action approving, disapproving, or approving in part and disapproving in part the SIP submittals submitted by Texas:

Region	Portion of SIP Submittal Requiring Action	Column A: Proposed Rule Deadline	Column B: Final Rule Deadline
HGB	Contingency Provisions for RFP Milestones 182(c)(9)	August 30, 2013	January 17, 2014
HGB	Ozone Attainment Demonstration	August 30, 2013	January 17, 2014

HGB	RACT Non-CTG VOC for Major Sources	February 1, 2013	August 1, 2013
HGB	RACT NOX for Major Sources	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Bulk Gasoline Plants	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG leaks from Gasoline Tank Trucks and Vapor Collection Systems	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Leaks from Petroleum Refinery Equipment	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Manufacture of Pneumatic Rubber Tires	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG SOCOMI Air Oxidation Processes	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG SOCOMI Distillation and Reactor Processes	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Shipbuilding/Repair	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Solvent Metal Cleaning	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Stage I Vapor Control Systems – Gasoline Service Stations	February 1, 2013	August 1, 2013
HGB	RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks	February 1, 2013	August 1, 2013

HGB	RACT VOC CTG Tank Truck Gasoline Loading Terminals	February 1, 2013	August 1, 2013
HGB	RFP VOC and NOX – Severe 15	August 30, 2013	January 17, 2014
HGB	VMT TCMS to Offset Growth	August 30, 2013	January 17, 2014
HGB	VMT Demonstrations and TCMs	August 30, 2013	January 17, 2014

3. If Texas withdraws any of the SIP submittals listed in Paragraph 2, then EPA's obligation to take the corresponding action on such SIP submittal is automatically terminated.

4. After signing a proposed or final rule or determination as described in Paragraph 2 of this Consent Decree, EPA shall promptly deliver notice of such actions to the Office of Federal Register for review and publication.

5. The deadlines in Paragraph 2 may be extended by (a) written stipulation executed by counsel for Sierra Club and EPA with notice to the Court, or (b) by the Court on a motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by Sierra Club and any reply by EPA. Any other provision of this Consent Decree may be modified by the Court following motion of Sierra Club or EPA for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any opposition by the non-moving party and any reply.

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 connection with Sierra Club v. Jackson, Case No. 12-cv-00012 (D.D.C.). Sierra Club therefore discharges and covenants not to sue the United

States, including EPA, for any such claims.

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 responses or final actions contemplated by this Consent Decree. EPA's obligation to perform the actions specified in this Consent Decree by the times specified herein 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 to waive or limit any claim, remedy, or defense, on any grounds, related to any final action EPA may take with respect to the actions addressed in this Consent Decree.

10. Nothing in this Consent Decree shall be construed to: (a) confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to CAA sections 307(b)(1), 42 U.S.C. §§ 7607(b)(1), including final action taken pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), approving, disapproving, or approving in part and disapproving in part a SIP submittal; or (b) waive any claims, remedies, or defenses the Parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

11. The deadline for filing a motion for costs of litigation, including reasonable attorney's fees, incurred prior to entry of this Consent Decree is hereby extended until sixty (60) days after the entry of this Consent Decree by this Court. During this time, the Parties shall seek to resolve informally any claim for costs of litigation, including reasonable attorney's fees, and if they cannot, will submit that issue to the Court for resolution. The United States does not waive or limit any defenses it may have to such claim. The Court shall retain jurisdiction to resolve

any requests for costs of litigation, including reasonable attorney's fees.

12. 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 the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

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

For Plaintiff Sierra Club:

ROBERT UKEILEY
Law Office of Robert Ukeiley
435R Chestnut Street, Suite 1
Berea, KY 40403
Phone: (859) 986-5402
Fax: (866) 618-1017
rukeiley@igc.org

For Defendant EPA:

STEPHANIE J. TALBERT
Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Phone: (202) 514-2617
Fax: (202) 514-8865
talbert.stephanie@usdoj.gov

KAYTRUE TING
Office of the General Counsel
U.S. Environmental Protection Agency
Ariel Rios Bldg., MC 2344A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Phone: (202) 564-6380

Fax: (202) 564-5603
Ting.kaytrue@epa.gov

14. 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 provide the other party with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within ten (10) business days after receipt of the notice, either party may move the Court to resolve the dispute.

15. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of Court shall be properly filed unless Sierra Club has followed the procedure set forth in Paragraph 14, and provided EPA with written notice received at least ten (10) business days before the filing of such motion or proceeding.

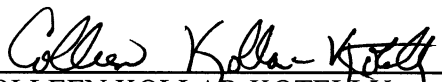
16. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. When EPA's obligations under Paragraphs 2 have been completed, any relevant notices have been published in the Federal Register, and any claim for costs of litigation, including reasonable attorney's fees, has been resolved pursuant to the process described in Paragraph 11, the above-captioned matter shall be dismissed with prejudice. EPA shall file an appropriate notice with the Court so that the Clerk may close the file.

17. 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 CAA section 113(g), 42 U.S.C. § 7413(g). EPA will deliver a public notice of this Consent Decree to the Federal Register for review, publication, and public comment within ten (10) business days after lodging this Consent Decree with the Court. After this Consent Decree has undergone an opportunity for notice and comment, the 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 CAA, 42 U.S.C. § 7413(g). 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.

18. 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.

SO ORDERED on this 14th day of August 2012.



COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

SO AGREED:

FOR PLAINTIFF Sierra Club

/s/ Robert Ukeiley
ROBERT UKEILEY
Law Office of Robert Ukeiley
435R Chestnut Street, Suite 1
Berea, KY 40403
Phone: (859) 986-5402
Fax: (866) 618-1017
rukeiley@igc.org

DATED: June 20, 2012

FOR DEFENDANT EPA

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

/s/ Stephanie J. Talbert

STEPHANIE J. TALBERT

Trial Attorney

United States Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

P.O. Box 7611

Washington, D.C. 20044

Phone: (202) 514-2617

Fax: (202) 514-8865

talbert.stephanie@usdoj.gov

DATED: June 20, 2012