

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

SIERRA CLUB,	)	Civil Action No.
	)	11-02180-RBW
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LISA P. JACKSON, Administrator,	)	
U.S. Environmental Protection Agency, and	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY	)	
	)	
Defendants.	)	
	)	

**NOTICE OF ERRATA**

On July 23, 2012, Defendant Lisa Jackson, Administrator of the United States Environmental Protection Agency (“EPA”), filed a notice of lodging of consent decree. Counsel attached the wrong document to that notice. Attached hereto are the corrected documents.

Respectfully submitted,

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural  
Resources Division  
/s/ EILEEN T. McDONOUGH  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-3126

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

SIERRA CLUB,	)	Civil Action No.
	)	11-02180-RBW
Plaintiff,	)	
	)	
v.	)	
	)	
LISA P. JACKSON, Administrator,	)	
U.S. Environmental Protection Agency, and	)	
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 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,

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural  
Resources Division  
/s/ EILEEN T. McDONOUGH  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
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WHEREAS, the Parties consider this Consent Decree to be an adequate and equitable resolution of the claims in the above-captioned case and consent to entry of this Consent Decree; and

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

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

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

2. EPA shall sign one or more notices of final rulemaking to approve or disapprove, in whole or in part, pursuant to CAA section 110(k) (3) and (4), 42 U.S.C. § 7410(k)(3) and (4), each SIP submission (or portion thereof on which EPA has not yet taken final action) identified in Attachment A by the applicable deadline; provided that nothing in this decree shall require EPA to act on any submission or portion thereof that is withdrawn prior to the applicable deadline.

3. Within 15 business days following issuance or signature of such notice(s) as set out in paragraph 2 above, EPA shall send notice of such action to the Office of the Federal Register for review and publication.

4. Any provision of this Decree may be modified by (a) written stipulation of the Parties with notice to the Court, or (b) by the Court following motion of any party to this Decree,

pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.

5. Sierra Club and EPA shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree. Upon entry, no party shall challenge the terms of this Decree.

6. 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 Plaintiff 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.

7. Nothing in this 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 Decree, including the discretion to alter, amend or revise any responses or final actions contemplated by this Decree. EPA's obligation to perform the actions specified in Paragraph 2 and 3 by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

8. Nothing in this Decree shall be construed as an admission of any issue of fact or law nor to waive or limit any claim or defense, on any grounds, related to any final EPA action may take pursuant to Paragraph 2 above.

9. Nothing in this 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).

10. The obligations imposed upon EPA under this Decree can only be undertaken using appropriated funds. No provision of this 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 federal statute.

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

For Plaintiff:

ROBERT UKEILEY  
Law Office of Robert Ukeiley  
435R Chestnut Street, Suite 1  
Berea, KY 40403  
rukeiley@igc.org

For Defendant:

EILEEN T. MCDONOUGH  
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12. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this 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, any party may move the Court to resolve the dispute.

13. 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 12, and provided EPA with written notice received at least ten (10) business days before the filing of such motion or proceeding.

14. 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 section 113(g), 42 U.S.C. § 7413(g). EPA will expeditiously prepare such notice and forward it to the Office of Federal Register after lodging the draft Consent Decree with the Court. After this Consent Decree has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall 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 federal government elects not to withdraw or withhold consent to this

Consent Decree, the parties shall promptly file a motion that requests the Court to enter this Consent Decree.

15. The Court shall retain jurisdiction to determine and effectuate compliance with this Decree. When EPA's obligations under Paragraphs 2 and 3 have been completed, and the Plaintiff's claims for costs of litigation have been resolved pursuant to the process described in Paragraph 6, the above-captioned matter shall be dismissed with prejudice. The Parties shall file the appropriate notice with the Court so that the Clerk may close the file.

16. 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 Decree.

SO ORDERED on this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
REGGIE B. WALTON  
UNITED STATES DISTRICT JUDGE

SO AGREED:

FOR PLAINTIFF

\_\_\_\_\_  
ROBERT UKEILEY  
Law Office of Robert Ukeiley  
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Berea, KY 40403  
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FOR DEFENDANT

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\_\_\_\_\_  
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**Attachment A**

<b>EPA Region One</b>	<b>Submittal Date</b>	<b>Final Action Date</b>
Eastern MA – NO <sub>x</sub> and VOC RACT	January 31, 2008	March 29, 2013
Eastern MA – 8-hour ozone Attainment Demonstration	January 31, 2008	March 29, 2013
Western MA – NO <sub>x</sub> and VOC RACT	January 31, 2008	March 29, 2013
Western MA – 8-hour ozone Attainment Demonstration	January 31, 2008	March 29, 2013
MA – Submission for revisions to 310 CMR 7.02(8), 7.03, 7.04(4), 7.12, 7.26(30)-(36)	February 13, 2008	March 29, 2013
MA – Visible emission rule	September 14, 2006	March 29, 2013
CT – NO <sub>x</sub> and VOC RACT	December 8, 2006	March 29, 2013
CT – Revisions to recordkeeping, monitoring and visible emissions rule	December 1, 2004	March 29, 2013
CT – Single source NO <sub>x</sub> credits for RACT	December 2, 2002	March 29, 2013

<b>EPA Region Two</b>	<b>Submittal Date</b>	<b>Final Action Date</b>
NJ – 8-hour ozone attainment plan for the Philadelphia-Wilmington-Atlantic City area	October 29, 2007	Feb. 28, 2013
NJ – 8-hour ozone attainment demonstration for New York-Northern New Jersey	October 29, 2007	June 28, 2013
NY – 8-hour ozone attainment demonstration for New York-Northern New Jersey	February 8, 2008	June 28, 2013

<b>EPA Region Three</b>	<b>Submittal Date</b>	<b>Final Action Date</b>
PA – Pittsburgh/Beaver Valley PM 2.5 attainment demonstration, contingency measures, emissions inventory, & RACM/RACT	November 10, 2009	Dec. 15, 2012
PA – NOx and non-CTG for major sources Allegheny County RACT	May 5, 2009	Feb. 28, 2013
PA – Amendment to general plan requirements 25 Pa. Code Chap. 127	April 14, 2009	March 29, 2013
PA – Allegheny County PSD; 110(a)(2)(C), (D)(i) & (J)	June 26, 2008	Feb. 28, 2013
PA – 8-hour ozone attainment plan for the Philadelphia area	August 29, 2007	Feb. 28, 2013
PA – 1997 8-hour RACT for Philadelphia County	Sept. 25, 2006	June 28, 2013
PA – PM Attainment plan for Philadelphia area	April 12, 2010	Aug. 15, 2012
MD – Revision #07-13; NSR, COMAR 26.11.17	October 24, 2007	March 29, 2013
MD – Revision #06-07; RACT NOx and non-CTG VOC for major sources	Sept. 12, 2006	Feb. 28, 2013
MD – Revision 03-11; FBE solid fuel cutoffs	December 1, 2003	Feb. 28, 2013
DE – Emissions inventory for 1997 PM-2.5	April 3, 2008	Feb. 28, 2013
DE – Philadelphia PM-2.5 attainment plan	April 3, 2008	Dec. 15, 2012
DE – Revision to Reg. 1102	Nov. 1, 2007	Feb. 28, 2013
DE – 8-hour ozone attainment plan for the Philadelphia-Wilmington area	June 13, 2007	Feb. 28, 2013