

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

_____)	
SIERRA CLUB,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 1:11-cv-00035-GK
)	
LISA P. JACKSON, in her Official Capacity)	
as Administrator of the United States)	
Environmental Protection Agency,)	
)	
Defendant.)	
_____)	

NOTICE OF LODGING OF CONSENT DECREE

PLEASE TAKE NOTICE that Defendant Lisa P. Jackson, in her official capacity as Administrator of the Environmental Protection Agency (“EPA” or “Defendant”), hereby 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 case is a Clean Air Act citizen suit in which Plaintiff Sierra Club alleges that Defendant Lisa P. Jackson, in her official capacity as Administrator of the Environmental Protection Agency (“EPA” or “Defendant”), has failed to perform duties mandated by Clean Air Act (“CAA”) section 110(k)(2), 42 U.S.C. § 7410(k)(2); section 110(c)(1)(A), 42 U.S.C. § 7410(c)(1)(A); and section 179(a), 42 U.S.C. § 7509(a).

2. Subject to the provisions of section 113(g) of the CAA, 42 U.S.C. § 7413(g), as described below, Plaintiff 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 certain dates as set forth in the consent decree. Compliance with the proposed consent decree will be complete when the actions listed in paragraphs 4 through 6 are performed. Paragraph 11 provides for the Court to retain jurisdiction to determine and effectuate compliance with the consent decree. When EPA’s obligations under the consent decree have been completed, EPA shall file an appropriate notice with the Court and Plaintiffs will have twenty days to respond to such 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
Assistant Attorney General
Environment and Natural Resources Division

OF COUNSEL:

Jan Tierney
Office of General Counsel
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

s/ Christina Richmond
CHRISTINA RICHMOND
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Telephone: (202) 514-3376
E-mail: christina.richmond2@usdoj.gov

Street address:
601 D Street, NW, Suite 8000
Washington, D.C. 20004

Attorneys for Defendant

Dated November 30, 2011

CERTIFICATE OF SERVICE

I certify that on November 30, 2011, a copy of the foregoing was served by the Court's

ECF-system upon:

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

/s/ Christina L. Richmond
CHRISTINA L. RICHMOND

EXHIBIT A

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

_____)	
SIERRA CLUB,)	
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Plaintiff,)	
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v.)	Civ. No. 1:11-cv-00035-GK
)	
LISA P. JACKSON, in her Official Capacity)	
as Administrator, United States Environmental)	
Protection Agency,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, Plaintiff Sierra Club (“Plaintiff”) filed a Complaint in this action in the United States District Court for the District of Columbia on January 3, 2011;

WHEREAS, in Claim One, Plaintiff alleged that defendant Lisa Jackson, Administrator of the U.S. Environmental Protection Agency (“EPA”), has failed to promulgate Federal Implementation Plans as mandated by section 110(c)(1)(A) of the Clean Air Act (“CAA”), 42 U.S.C. § 7410(c)(1)(A), for a number of areas designated as nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standards (“NAAQS”). Specifically, Plaintiff alleged that the CAA required EPA to promulgate Federal Implementation Plans containing provisions for (1) the demonstration of attainment and reasonable further progress for the Milwaukee-Racine area in Wisconsin, (2) the demonstration of attainment and reasonable further progress for the Sheboygan area in Wisconsin, (3) the implementation of reasonable available control technology (“RACT”) requirements for nitrogen oxides (“NOx”) for Illinois’ portion of the Metro St. Louis

area, and (4) the implementation of RACT requirements for volatile organic compounds (“VOCs”) and NO_x for Maine (except for the NO_x RACT requirement in Northern Maine¹);

WHEREAS, Plaintiff’s complaint in Claim One further alleged that EPA has failed to impose sanctions as mandated by section 179(a) of the CAA, 42 U.S.C. § 7509(a), on certain areas in Wisconsin, Illinois, and Maine for failure to submit a sufficient State Implementation Plan (“SIP”) for the 1997 8-hour ozone NAAQS for (1) the demonstrations of attainment and reasonable further progress for the Milwaukee-Racine area in Wisconsin, (2) the demonstrations of attainment and reasonable further progress for the Sheboygan area in Wisconsin, (3) the implementation of RACT requirements for NO_x for the Metro St. Louis area, and (4) the implementation of RACT requirements for VOCs and NO_x for Maine (except for the NO_x RACT requirement in Northern Maine);

WHEREAS, Plaintiff’s complaint in Claim Two alleged that 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 by approving in full, disapproving in full, or approving in part and disapproving in part the SIP submittals from (1) Missouri addressing the NO_x and VOC RACT requirements for the Missouri portion of the Metro St. Louis area for the 1997 8-hour ozone National Ambient Air Quality Standards; (2) Missouri addressing the demonstrations of attainment and reasonable further progress for the Missouri portion of the Metro St. Louis area; and (3) Illinois addressing the demonstrations of attainment and reasonable further progress for the Illinois portion of the Metro St. Louis area;

¹ The counties included in the Northern Maine exemption include Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties. *See* 71 Fed. Reg. 5701 (Feb. 3, 2006).

WHEREAS, on March 1, 2011, EPA published in the Federal Register a final rule determining that the Milwaukee-Racine and Sheboygan areas have attained the 1997 8-hour ozone National Ambient Air Quality Standard;

WHEREAS, on February 22, 2011, EPA published in the Federal Register a final rule approving Illinois' request to exempt sources of NOx in the Illinois portion of the Metro St. Louis areas from NOx RACT requirements for purposes of attaining the 1997 ozone 8-hour NAAQS;

WHEREAS, on June 9, 2011 (76 Fed. Reg. 33,647), EPA issued a final determination that the Missouri and Illinois portions of the Metro St. Louis area have attained the 1997 8-hour ozone NAAQS;

WHEREAS, on June 21, 2011, the State of Missouri withdrew the SIP submittals submitted on approximately June 21, 2007 addressing the requirements under CAA sections 42 U.S.C. §§ 7513a(a)(1)(B) [attainment demonstration] and 7511a(b)(1) [reasonable further progress] for the Missouri portion of the Metro St. Louis area for the 1997 8-hour ozone NAAQS;

WHEREAS, on July 21, 2011 (76 Fed. Reg. 43,598), EPA issued a final rule exempting sources of NOx in the Missouri portion of the Metro St. Louis area from the RACT requirement of the CAA for the 1997 8-hour ozone NAAQS;

WHEREAS, on September 9, 2011, the State of Missouri withdrew its SIP submission submitted on approximately January 17, 2007 addressing the implementation of RACT for NOX for the 1997 8-hour ozone NAAQS for the Missouri portion of the Metro St. Louis area;

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, and the power 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 January 31, 2012, the Administrator or her authorized delegatee shall sign a notice or notices, pursuant to section 110(k) of the Clean Air Act ("CAA"), 42 U.S.C. § 7410(k), taking final action approving or disapproving the SIP submittal submitted on approximately January 17, 2007 by Missouri addressing the implementation of RACT for VOCs for the 1997 8-hour ozone NAAQS for the Missouri portion of the Metro St. Louis area.
5. No later than May 31, 2012, the Administrator shall sign a notice of the Agency's final rule promulgating a FIP under 42 U.S.C. § 7410(c)(1) addressing the requirements under 42 U.S.C. § 7511c(a) [RACT] for VOCs and NO_x as they relate to the 1997 8-hour ozone NAAQS for Maine (except for the NO_x RACT requirement in Northern Maine) addressing any VOC and NO_x RACT obligation for which the Administrator or her authorized delegatee has not signed an approval notice or notices, pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k)(2).
6. (a) No later than May 31, 2012, the Administrator or her authorized delegatee shall sign a notice or notices, pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k) approving or disapproving, the SIP submittals submitted on approximately July 2, 2007 by

Illinois addressing the requirements under CAA sections 42 U.S.C. §§7513a(a)(1)(B) [attainment demonstration] and 7511a(b)(1) [reasonable further progress] for the Illinois portion of the Metro St. Louis area.

(b) The obligation in Paragraph 6(a) will be deemed met if EPA signs a final notice redesignating the Illinois portion of the Metro St. Louis area to attainment no later than May 31, 2012.

7. Within 15 business days following signature of such action required by paragraphs 4 through 6, EPA shall deliver notice of such action to the Office of the Federal Register for publication.

8. 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.

10. 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 Plaintiff is entitled to or eligible for recovery of any costs or attorneys' fees.

11. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. When EPA's obligations under this Consent Decree have been completed, this case shall be dismissed with prejudice. EPA shall file an appropriate notice with the Court

so that the Clerk may close the file. Unless Plaintiff objects within twenty days of service of such notice, the Consent Decree shall terminate.

12. 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.

13. 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.

14. 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).

15. 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.

16. 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.

17. 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: _____

ROBERT UKEILEY
Law Office of Robert Ukeiley
435R Chestnut Street, Suite 1
Berea, KY 40403
Tel: (859) 986-5402
Fax: (859) 618-1017

Counsel for Plaintiff

IGNACIA S. MORENO
Assistant Attorney General

Dated: _____

CHRISTINA L. RICHMOND
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 23986
Washington, D.C. 20026-3986
Tel: (202) 514-3376
Fax: (202) 514-8865

Counsel for Defendant

IT IS SO ORDERED.

Dated: _____

GLADYS KESSLER
United States District Judge