

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

_____)	
SIERRA CLUB,)	
)	
Plaintiff,)	
)	Civil Case No. 1:12-cv-00013 (RWR)
v.)	
)	
LISA P. JACKSON, in her official)	
capacity as Administrator, UNITED)	
STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendant.)	
_____)	

NOTICE OF LODGING OF PROPOSED CONSENT DECREE

PLEASE TAKE NOTICE that Defendant Lisa Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), submits for lodging only a proposed Consent Decree that is designed to resolve all issues in this case. The proposed Consent Decree should not be entered by the Court unless EPA subsequently moves the Court to do so. In conjunction with this Notice, EPA hereby states the following:

1. This is a Clean Air Act citizen suit in which Plaintiff Sierra Club alleges that EPA has failed to undertake certain nondiscretionary duties under the Clean Air Act, 42 U.S.C. §§ 7401-7671q, to take timely final action to approve, disapprove, or partially approve/disapprove state implementation plan (“SIP”) submittals or portions of submittals for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area from North Carolina and South Carolina.

2. Sierra Club and EPA have resolved all claims in this case and have set forth their agreement in the proposed Consent Decree. That proposed Consent Decree is being submitted herewith at Exhibit A for lodging only.

3. 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, which must last at least thirty days from the aforementioned Federal Register notice, the EPA Administrator or the Attorney General, as appropriate, must promptly consider any written comments received. Id.

4. 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.

5. The Administrator or the Attorney General, as appropriate, may withdraw or withhold consent to the proposed Consent Decree if comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act. Id. If consent is not withdrawn or withheld, EPA will execute the Consent Decree and submit it for approval by the Court and entry into the docket as a final Order.

6. The proposed Consent Decree addresses Sierra Club’s 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 therein are performed. Paragraph 18 provides for the Court to retain jurisdiction to determine and effectuate compliance

with the Consent Decree. When EPA's obligations under the Consent Decree are complete, EPA shall file an appropriate notice with the Court so the Clerk may close the file.

Accordingly, EPA respectfully requests that this Court lodge the proposed Consent Decree, but not sign it or otherwise enter it as an Order. EPA will, promptly after evaluating any public comments received during the public comment period, make an appropriate motion for the Court to enter the Consent Decree (unless it is determined that consent should be withheld based on the comments received) and will submit a final, fully executed version of the Consent Decree at that time for such final entry.

Respectfully submitted,

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

/s/ Christina L. Richmond
CHRISTINA L. RICHMOND
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Attorney for Defendant EPA

Dated: June 28, 2012

CERTIFICATE OF SERVICE

I certify that on this 28th day of June, 2012, I electronically filed a true and correct copy of the foregoing Notice of Lodging with the Clerk of the Court using the Electronic Case Filing (“ECF”) System of this Court, which will send notification of such filing to the attorneys of record who have registered ECF email addresses with this Court.

/s/ Christina L. Richmond

Exhibit A

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

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SIERRA CLUB,)	
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Plaintiff,)	
)	Civil Case No. 1:12-cv-00013 (RWR)
v.)	
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LISA P. JACKSON, in her official)	
capacity as Administrator, UNITED)	
STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, on March 9, 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 the state implementation plan ("SIP") submittals or portions of submittals for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area from North Carolina and South Carolina;

WHEREAS, Sierra Club specifically alleges that EPA has not yet taken action on the following SIP submittals or portions of submittals from North Carolina for its portion of the

Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area: the emissions inventory, the reasonable further progress (“RFP”) for volatile organic compounds (“VOC”) and nitrogen oxides (“NOx”) requirements, the reasonable area control technology (“RACT”) for NOx for major sources, and the emissions statements;

WHEREAS, Sierra Club specifically alleges that EPA has not yet taken action on the following SIP submittals or portions of submittals from South Carolina for its portion of the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area: the emissions inventory, the RFP for VOC and NOx, and the emissions statements;

WHEREAS, on April 24, 2012, EPA took final action to approve the SIP submittal submitted by North Carolina addressing the 1997 ozone NAAQS emissions statements requirement for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area (77 Fed. Reg. 24,382);

WHEREAS, on May 4, 2012, EPA took final action to approve the SIP submittals submitted by North Carolina addressing the 1997 ozone NAAQS emissions inventory for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area (77 Fed. Reg. 26,441);

WHEREAS, on May 18, 2012, EPA took final action to approve the SIP submittals submitted by South Carolina addressing the 1997 ozone NAAQS emissions inventory for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area (77 Fed. Reg. 29,540);

WHEREAS, the Parties wish to effectuate a complete and final settlement of Sierra Club v. Jackson, Case No. 12-cv-00013 (D.D.C.), without expensive and protracted litigation and 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 November 30, 2012, 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 North Carolina addressing the 1997 ozone NAAQS RFP for VOC and NO_x requirement for the Charlotte-Gastonia-Rock Hill area.

3. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), the appropriate EPA official shall no later than November 30, 2012, 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 South Carolina addressing the 1997 ozone NAAQS RFP for VOC and NO_x and the emissions statements requirements for the Charlotte-Gastonia-Rock Hill area.

4. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), the appropriate EPA official shall no later than May 1, 2013, 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 North Carolina addressing the 1997 ozone NAAQS RACT for NOx for major sources requirement for the Charlotte-Gastonia-Rock Hill area.

5. If any State withdraws any of the SIP submittals described in Paragraphs 2 through 4, then EPA's obligation to take the corresponding action on such SIP submittal is automatically terminated.

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

7. The deadlines in Paragraphs 2 through 4 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.

8. 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.

9. 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-00013 (D.D.C.). Sierra Club therefore discharges and covenants not to sue the United

States, including EPA, for any such claims.

10. 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.

11. 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.

12. 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).

13. 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.

14. 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.

15. 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
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435R Chestnut Street, Suite 1
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For Defendant EPA:

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16. 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.

17. 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 16, and provided EPA with written notice received at least ten (10) business days before the filing of such motion or proceeding.

18. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. When EPA's obligations under Paragraphs 2 through 4 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 13, 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.

19. 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.

20. 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 ____ day of _____ 2012.

JUDGE RICHARD W. ROBERTS
UNITED STATES DISTRICT JUDGE

SO AGREED:

FOR PLAINTIFF Sierra Club

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DATED:

FOR DEFENDANT EPA

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DATED:

Of Counsel for Defendant:

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