

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
SIERRA CLUB,)	Civil Action No.
)	1:12-cv-00705-CKK
Plaintiff,)	
)	
v.)	
)	
LISA P. JACKSON, Administrator,)	
U.S. Environmental Protection Agency.)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, on May 2, 2012, Plaintiff Sierra Club filed a 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 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") submission made by Oklahoma on July 16, 2010, that is captioned "Excess Emissions Reporting Requirements" (referred to herein as "OK SIP");

WHEREAS, the Parties wish to effectuate a complete and final settlement of Sierra Club v. Jackson, Case No. 1:12-cv-00705-CKK (D.D.C.), without expensive and protracted litigation and without the admission of any issue of fact or law;

(N)

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 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 May 31, 2013, sign for publication in the Federal Register a notice of proposed rulemaking to approve, disapprove, or approve in part and disapprove in part the OK SIP.
3. Pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), the appropriate EPA official shall no later than January 31, 2014, sign for publication in the Federal Register a notice of final rulemaking to approve, disapprove, or approve in part and disapprove in part the OK SIP.
4. If Oklahoma withdraws the OK SIP submittal, then EPA's obligation to take the actions required by Paragraphs 2 and 3 is automatically terminated.

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

6. The deadlines in Paragraphs 2 and 3 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.

7. 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.

8. 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. 1:12-cv-00705-CKK (D.D.C.). Sierra Club therefore discharges and covenants not to sue the United States, including EPA, for any such claims.

9. 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.

10. 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.

11. 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).

12. 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.

13. 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.

14. 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:

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For Defendant EPA:

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15. In the event of a dispute between the Parties concerning the interpretation or

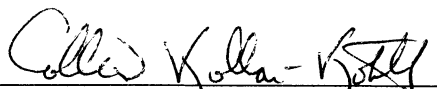
implementation of any aspect of this Consent Decree, the disputing party shall provide the other party with a written notice, which includes email, outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within ten (10) business days after receipt of the notice, either party may move the Court to resolve the dispute.

16. 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 15, and provided EPA with written notice received at least ten (10) business days before the filing of such motion or proceeding.

17. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. When EPA's obligations under Paragraphs 2 and 3 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 12, 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.

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 19th day of December 2012.


HON. COLLEEN KOLLAR KOTELLY
UNITED STATES DISTRICT JUDGE

SO AGREED:

FOR PLAINTIFF SIERRA CLUB /s/ ROBERT UKEILEY
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