

## SETTLEMENT AGREEMENT

WHEREAS, on January 13, 2011, Sierra Club filed a complaint (civil action no. 1:11-00100) against Lisa Jackson, Administrator, United States Environmental Protection Agency ("EPA") in the United States District Court for the District of Columbia (hereinafter Sierra Club v. EPA);

WHEREAS, in its complaint Sierra Club alleges that EPA has failed to perform nondiscretionary duties under the Clean Air Act related to whether certain areas designated as nonattainment for ozone attained the 1-hour ozone national ambient air quality standard ("1-Hour ozone standard") by the applicable attainment date;

WHEREAS, in its complaint Sierra Club alleges that EPA has failed to make a required attainment determination for the 1-Hour ozone standard for the following six areas: (1) Houston-Galveston-Brazoria, (2) Baltimore, (3) New York-Northern New Jersey-Long Island, (4) Springfield (Western Massachusetts), (5) Greater Connecticut, and (6) the Boston-Lawrence-Worcester area;

WHEREAS, on March 24, 2011, EPA filed its answer to Sierra Club's complaint, denying any liability;

WHEREAS, the Parties have agreed to a settlement of the claims raised in this action without any admission or adjudication of fact or law, which they consider to be a just, fair, and equitable resolution of the claims raised;

NOW, THEREFORE, the Parties agree to this settlement in the manner, terms, and conditions as follows:

### GENERAL TERMS

1. The parties to this Settlement Agreement ("Agreement") are Sierra Club and EPA.

2. For purposes of this Agreement, the following terms shall have the meanings provided below:

"Agreement" refers to this document.

"EPA" means the Administrator of the United States Environmental Protection Agency, or the Administrator's duly authorized representative, and the United States Environmental Protection Agency.

"1-Hour ozone standard" refers to the 1-hour ozone national ambient air quality standard of 0.12 parts per million promulgated in 1979, 44 Fed. Reg. 8202 (Feb. 8, 1979).

"Settling Parties" refers to Sierra Club and EPA.

### AGREED DEADLINES

3. Within five (5) days of the execution of this Agreement by both Settling Parties, the Settling Parties shall file a joint motion with the Court in Sierra Club v. Jackson, notifying it of this Agreement and requesting the Court enter an order holding litigation in abeyance pending completion of the process under section 113(g) of the Clean Air Act and during the period

required to effectuate the terms of this Agreement, if EPA gives final approval and consents to this Agreement after the Clean Air Act section 113(g) process addressed in paragraphs 25 and 26 below.

Houston –Galveston-Brazoria (TX)

4. By January 31, 2012, EPA will sign a notice, to be published in the Federal Register, proposing a determination as to whether the Houston-Galveston-Brazoria area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

5. By May 31, 2012, EPA will sign a notice, to be published in the Federal Register, determining whether the Houston-Galveston-Brazoria area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

Baltimore (MD)

6. By January 31, 2012, EPA will sign a notice, to be published in the Federal Register, proposing a determination as to whether the Baltimore area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

7. By May 31, 2012, EPA will sign a notice, to be published in the Federal Register, determining whether the Baltimore area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

New York- Northern New Jersey-Long Island

8. By January 31, 2012, EPA will sign a notice, to be published in the Federal Register, proposing a determination as to whether the New York-Northern New Jersey-Long Island area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

9. By May 31, 2012, EPA will sign a notice, to be published in the Federal Register, determining whether the New York-Northern New Jersey-Long Island area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

Springfield (Western Massachusetts)

10. By January 31, 2012, EPA will sign a notice, to be published in the Federal Register, proposing a determination as to whether the Springfield (Western Massachusetts) area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

11. By May 31, 2012, EPA will sign a notice, to be published in the Federal Register, determining whether the Springfield (Western Massachusetts) area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

Greater Connecticut

12. By January 31, 2012, EPA will sign a notice, to be published in the Federal Register, proposing a determination as to whether the Greater Connecticut area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

13. By May 31, 2012, EPA will sign a notice, to be published in the Federal Register, determining whether the Greater Connecticut area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

Boston-Lawrence-Worcester (MA-NH)

14. By January 31, 2012, EPA will sign a notice, to be published in the Federal Register, proposing a determination as to whether the Boston-Lawrence-Worcester area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

15. By May 31, 2012, EPA will sign a notice, to be published in the Federal Register, determining whether the Boston-Lawrence-Worcester area has attained the 1-hour ozone standard by its 1-hour ozone attainment date.

16. Within 15 business days after taking each action required in Paragraphs 4-15, EPA shall send notice of such action to the Office of the Federal Register for review and publication.

**TERMINATION OF LAWSUIT**

17. Within 30 days after EPA's completion of the obligations in paragraphs four through 16, Sierra Club and EPA shall jointly file with the Court in *Sierra Club v. Jackson* (civil action no. 1:11-0100) a motion pursuant to Fed. R. Civ. P. 41(a) to dismiss with prejudice Sierra Club's Complaint. If Sierra Club fails to join in such a motion, EPA may file such a motion and Sierra Club shall not oppose it.

## **REMEDY FOR NON-COMPLIANCE**

18. If EPA fails to timely fulfill any duty under this Agreement, Sierra Club's sole judicial remedy shall be to the right to ask the Court to lift the stay described in paragraph 3, and to pursue the claims raised in its Complaint. EPA does not waive or limit any defense relating to the claims raised in Sierra Club's Complaint, nor does EPA concede that it has any legal duty to take the actions called for in this Settlement Agreement.

19. The Settling Parties agree that contempt of court is not an available remedy under this Agreement.

## **AGENCY DISCRETION**

20. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law. EPA's obligation to take the actions set forth in Paragraphs 4-16 by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

## **JURISDICTION**

20. Nothing in the terms of this Agreement shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to sections 307(b)(1) of the CAA, 42 U.S.C. §§ 7607(b)(1).

## **EFFECT OF SETTLEMENT AGREEMENT**

21. The Settlement Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any Settling Party.

22. Except as set forth in this Agreement, the Settling Parties retain all rights, claims, defenses, and discretion they may otherwise have. EPA specifically reserves the right to assert that no reclassification for the 1-hour ozone standard will be a consequence of, or required by, a determination made pursuant to this agreement as to whether the area failed to attain the 1-hour ozone standard by the area's attainment date. Sierra Club specifically reserves the right to assert that reclassification for the 1-hour ozone standard will be a consequence of, and required by, a determination made pursuant to this agreement as to whether the area failed to attain the 1-hour ozone standard by the area's attainment date.

## **COSTS**

23. The parties agree that Sierra Club shall have until 180 days after EPA gives final approval and consents to this Agreement following the Clean Air Act section 113(g) process (addressed in paragraphs 25 and 26 below) to file a motion for costs of litigation (including attorneys' fees). During this time the parties shall seek to resolve informally any claim for costs of litigation (including attorneys' fees). EPA reserves its right to object to the award of any such costs.

## **MODIFICATION**

24. This Agreement, including the deadlines set forth in paragraphs 4 through 16, may be modified or amended by written agreement by counsel for the Settling Parties.

## **CLEAN AIR ACT SECTION 113(g)**

25. The Settling Parties agree and acknowledge that final approval and entry of this Agreement is subject to the requirements of Clean Air Act § 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed Agreement be given to the public, that the public shall have a reasonable opportunity to make any comments, and that the Administrator or Attorney General, as appropriate, must consider those comments in deciding whether to agree to this Settlement.

26. EPA shall submit a public notice of this Agreement to the Federal Register for publication and public comment within fourteen days of execution of this Agreement by the Settling Parties. Within 45 days of the close of the public comment period EPA shall notify Sierra Club whether it consents to this Agreement.

## **EFFECTIVE DATE**

27. This Agreement shall become effective upon signature by all Settling Parties, completion of the public process under section 113(g) of the Clean Air Act, and EPA's notification to Sierra Club in writing of its final consent to the Agreement.

## **COMPLIANCE WITH OTHER LAWS**

28. No provision of this Agreement shall be interpreted so as to constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the APA, 5 U.S.C. §§ 551-559, 701-706, the Clean Air Act, or any other law or regulation, either substantive or procedural.

## **REPRESENTATIVE AUTHORITY**

29. Each undersigned representative of the parties to this Agreement certifies that he is fully authorized by the party to enter into and execute the terms and conditions of this Agreement. By signature below, all Settling Parties consent to this Agreement.

**FOR EPA:**

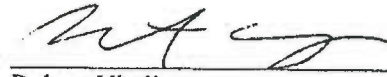
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