

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

SIERRA CLUB,)
)
Plaintiff,)
)
v.)
)
LISA JACKSON, in her official)
capacity as Administrator, United States)
Environmental Protection Agency,)
)
Defendant.)
)

Case: 1:10-cv-02112-JEB

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 which Defendant lodges today 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,

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Environment and Natural Resources Division

/s/ Eileen T. McDonough
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CONSENT DECREE

WHEREAS, Plaintiff Sierra Club filed this action pursuant to section 304(a)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a)(2), alleging that Defendant Lisa Jackson, Administrator of the United States Environmental Protection Agency (“EPA”), failed to timely perform a duty mandated by CAA section 110(k)(2) and (3), *id.* §§ 7410(k)(2) and (3), to approve or disapprove (or approve in part and disapprove in part) the state implementation plan (“SIP”) revision dated July 29, 2008, submitted by Arkansas to EPA (referred to as “Arkansas Regional Haze SIP”).

WHEREAS, Plaintiff and EPA (collectively the “Parties”) wish to effectuate a settlement of the above-captioned case without expensive and protracted litigation.

WHEREAS, the Parties consider this Decree to be an adequate and equitable resolution of the claims in the above-captioned case.

WHEREAS, the Court, by entering this Decree, finds that this 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,

ADJUDGED and DECREED that:

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

2. By December 15, 2011, EPA shall sign a notice of final rulemaking in which it shall approve or disapprove, in accordance with CAA section 110(k), 42 U.S.C. § 7410(k), the Arkansas Regional Haze SIP. EPA shall expeditiously deliver the notice of final rulemaking to the Office of the Federal Register for publication and shall provide a copy of the notice of final rulemaking to Plaintiff within ten (10) days after signature.

3. The Parties agree that Plaintiff is entitled to recover costs of litigation (including attorneys' fees) incurred in this matter pursuant to CAA section 304(d), 42 U.S.C. § 7604(d). The deadline for filing a motion for costs of litigation (including attorney's fees) for activities performed prior to entry of this Consent Decree in this case is hereby extended until ninety (90) days after entry of this Consent Decree by the Court. During this time the Parties shall seek to resolve informally any claim for costs of litigation (including attorney's fees), and if they cannot, will submit that issue to the Court for resolution.

4. The deadline in paragraph 2 of this Decree may be extended for a period of ninety (90) days or less by written stipulation executed by counsel for Plaintiff and EPA which shall be filed with the Court. Any other extension of the deadline in paragraph 2 of this Decree may be approved by the Court upon a motion of EPA, made pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by Plaintiff. Any other provision of this

Consent Decree may be modified by the Court following motion of Plaintiff or EPA pursuant to the Federal Rules of Civil Procedure and upon consideration of any opposition by the non-moving party.

5. Plaintiff and EPA shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

6. Nothing in this 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 action which is the subject of this Decree, including the discretion to alter, amend or revise any final action contemplated by this Decree. EPA's obligation to perform the actions specified in paragraph 2 by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

7. 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 action EPA may take with respect to the Arkansas Regional Haze SIP.

8. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any final decision made by EPA pursuant to this Decree. Nothing in this Decree 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 CAA sections 307(b)(1), 42 U.S.C. § 7607(b)(1). Nothing in this Decree shall be construed to waive any remedies or defenses the Parties may have under CAA section 307(b)(1).

9. The Parties recognize and acknowledge that the obligations imposed upon EPA under this Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this 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.

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

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11. 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.

12. No motion or other proceeding seeking to enforce this Decree or for contempt of Court shall be properly filed unless Plaintiff has followed the procedure set forth in paragraph 11, and provided EPA with written notice received at least ten (10) business days before the filing of such motion or proceeding.

13. The Court shall retain jurisdiction to determine and effectuate compliance with this Decree. After EPA has completed the relevant actions set forth in paragraph 2 of this Consent Decree, any relevant notices have been published in the Federal Register, and any claim for costs of litigation, including attorneys' fees, has been resolved, EPA may move to have this Decree terminated. Plaintiff shall have fourteen (14) days in which to respond to such motion.

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 CAA section 113(g), 42 U.S.C. § 7413(g). EPA will submit a public notice of this Consent Decree to the Federal Register for publication and public comment within ten (10) 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. 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.

15. 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 _____ 2011.

JUDGE JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE

SO AGREED:

FOR PLAINTIFF

/s/ William J. Moore, III
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FOR DEFENDANT

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