

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB and KENTUCKY)	
ENVIRONMENTAL FOUNDATION,)	
)	
Plaintiffs,)	
)	
v.)	10-CV-00889-CKK
)	
LISA P. JACKSON, in her)	
official capacity as)	
Administrator, United States)	
Environmental Protection)	
Agency,)	
)	
Defendant.)	

DEFENDANT’S NOTICE OF LODGING OF PROPOSED CONSENT DECREE

Defendant Lisa P. Jackson, in her official capacity as Administrator, United States Environmental Protection Agency (“EPA”) with this notice lodges with the Court a proposed consent decree.

The proposed consent decree which EPA 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 must promptly consider any written comments received. *Id.* If none of the comments disclose facts or considerations which indicate that the decree is inappropriate, improper, inadequate or inconsistent with the

requirements of the Clean Air Act, EPA will request the Court to enter the decree. Id.

October 29, 2010

Respectfully submitted,

Ignacia S. Moreno
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

/s/ Angeline Purdy

By: _____
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CONSENT DECREE

WHEREAS, Plaintiffs, Sierra Club and Kentucky Environmental Foundation (“Plaintiffs”) filed their Complaint (Civil Case No. 10-CV-889) on May 26, 2010 pursuant to Section 304(a) of the Clean Air Act (“Act”), 42 U.S.C. § 7604(a); and

WHEREAS, Plaintiffs allege that Lisa P. Jackson, in her official capacity as Administrator, United States Environmental Protection Agency (hereinafter “the Administrator”) has failed to perform nondiscretionary duties to take final action on certain State Implementation Plan (“SIP”) submittals by the State of Kentucky pursuant to Section 110(k)(2) of the Act, 42 U.S.C. § 7410(k)(2); and

WHEREAS, Plaintiffs and the Administrator (collectively “the Parties”) wish to effectuate a settlement in the above-captioned matter without expensive and protracted litigation;

and

WHEREAS, the Parties consider this Consent Decree (“Decree”) to be an adequate and equitable resolution of the claims in the above-captioned matter; and

WHEREAS, the Court, by entering this Decree, finds that the Decree is fair, reasonable, in the public interest, and consistent with the Act, 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 and to order the relief contained in this Decree. Venue is proper in the United States District Court for the District of Columbia.

2. On or before April 15, 2011, the appropriate EPA official shall sign, and thereafter forward within 15 business days to the Office of the Federal Register for review and publication, final action on the Commonwealth of Kentucky’s May 27, 2008 SIP submittals titled as follows:

- a. Ozone Maintenance Plan SIP Revision for a Portion of Greenup County Located Within the Kentucky Portion of the Huntington-Ashland 8-Hour Ozone 110(a)(1) Maintenance Area;
- b. The Edmonson County 8-Hour Ozone 110(a)(1) Maintenance Area; and
- c. The Lexington 8-Hour Ozone 110(a)(1) Maintenance Area (Fayette and Scott Counties).

3. On or before March 15, 2012, the appropriate EPA official shall sign, and

thereafter forward within 15 business days to the Office of the Federal Register for review and publication, final action on the Commonwealth of Kentucky's June 25, 2008 SIP submittal of a Regional Haze State Implementation Plan.

4. Any provision of this Decree may be modified by (a) written stipulation of the Parties with notice to the Court, or (b) by the Court following motion of any party to this Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party and any reply.

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

6. 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 time, 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 the Administrator that Plaintiffs are entitled to or eligible for recovery of any costs or attorneys' fees.

7. Nothing in this Decree shall be construed to limit or modify any discretion accorded the Administrator by the Act or by general principles of administrative law in taking the actions which are the subject of this Decree.

8. Nothing in this Decree shall be construed as an admission of any issue of fact or law.

9. Nothing in this Decree shall be construed to confer upon the district court

jurisdiction to review any final decision made by the Administrator 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 Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1). Nothing in the terms of this Decree shall be construed to waive any remedies or defenses the Parties may have under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1).

10. The obligations imposed on the Administrator under this Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that the Administrator obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

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

For Plaintiffs:

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

For Defendants:

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or such other person as either party may subsequently identify in writing to the other party.

12. 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 Parties with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within thirty (30) days after receipt of the notice, any Party may move the Court to resolve the dispute.

13. 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 Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA will expeditiously prepare such notice and forward it to the Office of Federal Register after lodging the draft Consent Decree with the Court. After this Consent Decree has undergone an

opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall 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 Clean Air Act. If the federal government elects not to withdraw or withhold consent to this Consent Decree, the parties shall promptly file a motion that requests the Court to enter this Consent Decree.

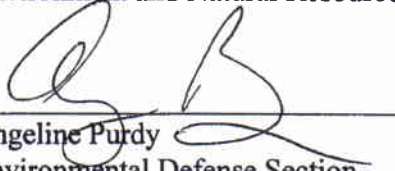
14. The Court shall retain jurisdiction to determine and effectuate compliance with this Decree. When the Administrator's obligations under Paragraphs 2 and 3 have been completed, and Plaintiffs' claims for costs of litigation have been resolved pursuant to the process described in Paragraph 6, the above-captioned matter shall be dismissed with prejudice. The Parties shall file the appropriate notice with the Court so that the Clerk may close the file.

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.

Respectfully submitted,

Ignacia S. Moreno
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

By:

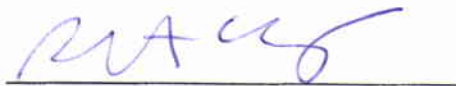


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Counsel for Plaintiffs

Date: 10/28/10

SO ORDERED: _____, 2010

Colleen Kollar-Kotelly
United States District Judge