

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

_____	)	
SIERRA CLUB, <u>et al.</u>	)	
	)	
Plaintiff,	)	
	)	Case Number 1:04CV00094 (RBW)
v.	)	
	)	
STEPHEN L. JOHNSON,	)	
Administrator, United States	)	
Environmental Protection Agency,	)	
	)	
Defendant.	)	
_____	)	

**CONSENT DECREE**

WHEREAS, Plaintiffs Sierra Club and United States Public Interest Research Group (“USPIRG”) (together, “Plaintiffs”) filed thier original complaints in this action on January 21, 2004 against Defendant Michael O. Leavitt, Administrator, U.S. Environmental Protection Agency (“EPA”);

WHEREAS, Plaintiffs filed a supplemental complaint in this action on February 22, 2005;

WHEREAS, this action involves allegations concerning EPA’s obligations under section 202 of the Clean Air Act, as amended in 1990, see Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, and regulations promulgated thereunder, see 40 C.F.R. § 80.1045;

WHEREAS, 40 C.F.R. § 80.1045 provides that “No later than July 1, 2003, [EPA] shall propose any requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels that [EPA] determines are appropriate pursuant to section 202(l)(2) of the [Clean Air] Act,”

WHEREAS, 40 C.F.R. § 80.1045 further provides that EPA “will take final action on such proposal no later than July 1, 2004;”

WHEREAS, EPA has not to date proposed any such requirements or taken any final action on such requirements;

WHEREAS, this Court has found that it has jurisdiction under Clean Air Act § 304(a)(2), 42 U.S.C. § 7604(a)(2) over the claims settled herein;

WHEREAS, it is in the interests of the public, the parties, and judicial economy to resolve Plaintiffs’ claims without further litigation;

WHEREAS, Plaintiffs and EPA have agreed to a settlement of Plaintiffs’ claims without any admission or adjudication of fact or law, which they consider to be a just, fair, adequate and equitable resolution of said claims;

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of the claims stated in these cases;

WHEREAS, by entering into this Consent Decree, Plaintiffs do not waive any claims and EPA does not waive any defenses, on any grounds, related to any matters that are not resolved by this Decree;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**Definition of Terms**

1. As used in this Consent Decree, the following terms shall have the following meanings:

(a) “Administrator” means the Administrator of EPA (or the Administrator’s authorized representative).

(b) “Action Dates” means the signature dates of February 28, 2006 and February 9, 2007 set forth in Paragraph 2 below.

**Claims Resolved and Agency Actions To Be Taken**

2. The claims in this case shall be resolved and the Administrator shall take certain actions, as follows:

(a) Not later than February 28, 2006, the Administrator shall sign a proposed rule containing requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels as the Administrator determines are appropriate pursuant to section 202(l)(2) of the Clean Air Act , or, in the alternative propose that no such requirements are necessary.

(b) Not later than February 9, 2007, the Administrator shall sign a final rule taking final action on such proposal.

**Publication in Federal Register and Distribution**

3. No later than five business days after signature of said rules, EPA shall deliver to the Office of the Federal Register for prompt publication the rules covered by this Decree. Following such delivery, EPA shall not take any action (other than as necessary to correct any typographical error or other errors in form) to delay or otherwise interfere with publication of such notices in the Federal Register. In addition, within two business days following signature, EPA shall send copies of said rules to Plaintiffs at the following address:

JAMES S. PEW  
Earthjustice  
1625 Massachusetts Ave., N.W.,  
Suite 702  
Washington, DC 20036

**Modification of the Decree**

4. Any provision of this Decree may be modified by (a) written stipulation of Plaintiffs and EPA with notice to the Court, or (b) by the Court following motion of any party to this Decree, for good cause shown, and upon consideration of any response by the non-moving party.

5. EPA may request modification of the Action Dates in accordance with the following procedures:

(a) If EPA seeks to modify an Action Date established by this Decree, and provides notice to Plaintiffs of said modification and of the reasons then known for said modification at least 60 days prior to the Action Date and files a motion to modify at least 45 days prior to the Action Date, then the filing of such motion shall, upon request by EPA, stay the Action Date. Such stay shall remain in effect until the earlier of (i) a dispositive ruling by this Court on such motion, or (ii) the date 30 days after the Action Date.

(b) If EPA seeks to modify an Action Date established by this Decree by 30 days or less, and provides notice to Plaintiffs of said modification and of the reasons then known for said modification at least 20 days prior to the Action Date sought to be modified and files the motion at least 15 days prior to the Action Date, then the filing of such motion shall, upon request by EPA, stay the Action Date. Such stay shall remain in effect until the earlier of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in the motion.

(c) If EPA seeks a modification of an Action Date and does not provide notice pursuant to subparagraphs (a) or (b) above, then any such request for modification shall demonstrate why EPA could not have utilized the notification procedures set forth in

subparagraphs (a) or (b) above. The filing of a request pursuant to this subparagraph shall not act to stay the Action Date.

(d) After following the procedures of subparagraphs (a), (b) or (c) above, EPA may move for additional relief, including stays of an Action Date that is the subject of pending motions to modify this Decree.

(e) Any motion to modify the schedule established in this Decree shall be accompanied by a motion for expedited consideration. All parties to this Decree shall join in any motion for expedited consideration associated with a motion to modify filed pursuant to the provisions of subparagraphs (a) or (b) above.

#### **Retention of Jurisdiction**

6. The Court shall retain jurisdiction to effectuate compliance with this Decree and to consider any requests for costs of litigation (including attorney's fees).

#### **Savings Provisions**

7. Nothing in the terms of this Decree shall be construed either (a) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1); or (b) to waive any remedies Sierra Club or USPIRG may have under Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1).

8. Nothing in this Decree shall be construed to limit or modify any discretion EPA may have to alter, amend or revise regulations promulgated pursuant to this Decree, from time to time, or to promulgate superseding regulations.

9. Except as expressly provided herein, nothing in this Decree shall be construed to limit or modify any discretion accorded EPA by the Clean Air Act or by general principles of administrative law in taking the actions which are the subject of this Decree.

10. Nothing in this Decree relieves EPA of the obligation to act in a manner consistent with the Clean Air Act and other applicable statutes. The obligations imposed on EPA under Paragraph 2 of this Consent Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

#### **Section 113(g)**

11. The Parties agree and acknowledge that before this Decree can be finalized and entered by the Court, EPA must provide notice in the Federal Register and an opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After this 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 his/her consent to the Decree, in accordance with section 113(g) of the Clean Air Act. If the Administrator and/or the Attorney General elect not to withdraw or withhold his/her consent to this Decree, the parties shall promptly file a motion that request the Court to enter this Consent Decree.

#### **Dispute Resolution**

12. In the event of a disagreement between the parties concerning the interpretation of any aspect of this Consent Decree, the dissatisfied party shall provide the other party with

written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute. If the parties are unable to resolve the dispute, then either party may petition the Court to resolve the dispute.

**Signature of the Parties**

13. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to the Court's entry of the terms and conditions of this Decree.

**Costs of Litigation (Including Attorney's Fees)**

14. Notwithstanding Local Rule 215(a) and Fed. R. Civ. P. 54, 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. The Court will retain jurisdiction to resolve any such request for the costs of litigation (including attorney's fees).

BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

