

1 Jeremy C. Lieb (WSB #47219)  
Erik Grafe (AK Bar #0804010) (*pro hac vice* pending)  
2 EARTHJUSTICE  
441 W 5th Avenue, Suite 301  
3 Anchorage, AK 99501  
T: 907.277.2500  
4 F: 907.277.1390  
E: jlieb@earthjustice.org  
5 egrafe@earthjustice.org

6 Kristen L. Boyles (WSB #23806)  
EARTHJUSTICE  
7 705 Second Avenue, Suite 203  
Seattle, WA 98104  
8 T: 206.343.7340  
F: 206.343.1526  
9 E: kboyles@earthjustice.org

10 *Attorneys for Citizens for Clean Air, a project of  
Alaska Community Action on Toxics, and Sierra Club*

11 Emma Pokon (Alaska Bar No. 1011112)  
ALASKA DEPARTMENT OF LAW  
12 Office of the Attorney General  
1031 W. 4th Avenue, Suite 200  
13 Anchorage, AK 99501  
Tel: (907) 269-5100  
14 Email: emma.pokon@alaska.gov

15 *Attorney for Defendant-Intervenor State of Alaska*

16 UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
17 AT SEATTLE

18 CITIZENS FOR CLEAN AIR *et al.*, ) Case No. 2:18-cv-01803  
19 Plaintiffs, )  
20 v. ) CONSENT DECREE: PLAINTIFFS  
AND STATE OF ALASKA )  
21 ANDREW WHEELER *et al.*, )  
22 Defendants, )  
23 STATE OF ALASKA )  
24 Defendant-Intervenor. )

25 CONSENT DECREE  
(Case No. 2:18-cv-01803)

*Earthjustice*  
441 W 5th Avenue, Suite 300  
Anchorage, AK 99501  
907.277.2500

1 WHEREAS, on December 18, 2018, Citizens for Clean Air and Sierra Club (“Plaintiffs”)  
2 filed the above-captioned matter against Andrew Wheeler, in his official capacity as  
3 Administrator of the United States Environmental Protection Agency, and Chris Hladick, in his  
4 official capacity as Regional Administrator of the United States Environmental Protection  
5 Agency, Region 10 (collectively, “EPA”);

6 WHEREAS, the State of Alaska moved to intervene as a defendant in this matter, and the  
7 Court granted intervention on July 16, 2019;

8 WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action and have  
9 entered into a separate consent decree (“EPA consent decree”);

10 WHEREAS, the EPA consent decree obligates EPA to sign a notice of final rulemaking  
11 determining whether the State of Alaska has made an administratively complete state  
12 implementation plan (“SIP”) submission intended to meet serious area nonattainment plan  
13 requirements for purposes of the 2006 24-hour PM2.5 National Ambient Air Quality Standards  
14 in the Fairbanks North Star Borough;

15 WHEREAS, Plaintiffs and EPA initially proposed that the EPA consent decree would  
16 obligate EPA to sign the final notice of rulemaking no later than July 8, 2019;

17 WHEREAS, the State of Alaska disputes the claims asserted by Plaintiffs;

18 WHEREAS, following the Court’s order granting the State of Alaska’s intervention  
19 motion, Plaintiffs agreed to amend the EPA consent decree to extend the date by which it would  
20 obligate EPA to sign the final notice of rulemaking to no later than January 15, 2020, provided  
21 that Plaintiffs and the State of Alaska enter into this consent decree (“State consent decree”)  
22 concurrently;

23 WHEREAS, the Plaintiffs and the State of Alaska agree to enter into the State consent  
24

1 decree without any admission of any issue of fact or law;

2 NOW THEREFORE, upon the consent of the Plaintiffs and the State of Alaska, it is  
3 hereby ordered, adjudged, and decreed that:

4 1. No later than December 15, 2019, the State of Alaska, Department of Environmental  
5 Conservation (ADEC) shall submit a serious area SIP to EPA; however, any disputes regarding  
6 the content of the serious area SIP, including whether the submitted SIP is administratively  
7 complete or approvable, are beyond the scope of this consent decree.

8 2. Upon submission of the serious area SIP to EPA, ADEC will provide notice to the  
9 Court and this consent decree shall terminate in seven days.

10 3. The deadline established by this consent decree may only be extended: (a) by written  
11 stipulation of Plaintiffs and the State of Alaska with notice to the Court; or (b) by the Court upon  
12 motion of the State of Alaska for compelling need shown and upon consideration of any  
13 response by Plaintiffs and any reply by the State of Alaska. Under this section, “compelling  
14 need” may include additional time required to re-notice regulations for public comment to ensure  
15 the final rules are promulgated in accordance with the Alaska Administrative Procedures Act, AS  
16 44.62.010. et seq. Any change to the deadline established by this State consent decree shall not  
17 by itself either affect the deadline established in the EPA consent decree or constitute good cause  
18 for purposes of paragraph 4 of the EPA consent decree.

19 4. In the event of a dispute between Plaintiffs and the State of Alaska concerning the  
20 interpretation or implementation of any aspect of this consent decree, the disputing party shall  
21 provide the other party with a written notice outlining the nature of the dispute and requesting  
22 informal negotiations. These parties shall meet and confer in order to attempt to resolve the  
23 dispute. If these parties are unable to resolve the dispute within twenty (20) business days after  
24

1 receipt of the notice, either party may petition the Court to resolve the dispute.

2 5. No motion seeking to enforce this consent decree or for contempt of Court shall be  
3 properly filed unless the procedure set forth in Paragraph 3 has been followed, and the non-  
4 moving party has been provided with written notice at least twenty (20) business days before the  
5 filing of such motion.

6 6. Plaintiffs shall not seek from the State any costs of litigation (including attorneys'  
7 fees) for activities related to the State's intervention and this State consent decree performed  
8 prior to the entry of this consent decree.

9 7. This Court shall retain jurisdiction over this matter to enforce the terms of this consent  
10 decree.

11 8. Any notices required or provided for by this consent decree shall be in writing, via  
12 electronic mail, and sent to the following (or to any new address of counsel as filed and listed in  
13 the docket of the above-captioned matter, at a future date):

14 For Plaintiffs Citizens for Clean Air and Sierra Club:

15 Jeremy Lieb  
16 EARTHJUSTICE  
17 441 W 5th Avenue, Suite 301  
18 Anchorage, AK 99501  
19 T: 907.792.7104  
20 E: jlieb@earthjustice.org

21 Erik Grafe  
22 EARTHJUSTICE  
23 441 W 5th Avenue, Suite 301  
24 Anchorage, AK 99501  
25 E: egrafe@earthjustice.org  
26 T: 907.792.7102

1 Kristen L. Boyles  
2 EARTHJUSTICE  
3 705 Second Avenue, Suite 203  
4 Seattle, WA 98104  
5 T: 206.343.7340  
6 E: kboyles@earthjustice.org

7 For Defendant State of Alaska:

8 Emma Pokon  
9 ALASKA DEPARTMENT OF LAW  
10 Office of the Attorney General  
11 1031 W. 4th Avenue, Suite 200  
12 Anchorage, AK 99501  
13 Tel: (907) 269-5100  
14 Email: emma.pokon@alaska.gov

15 9. This agreement is voidable at the sole discretion of any party and the terms of the  
16 proposed consent decree may not be used as evidence in any litigation between the parties if, for  
17 any reason:

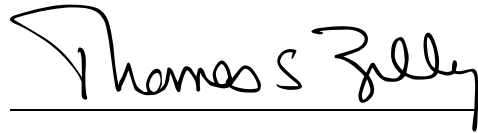
- 18 a. The Court should decline to approve this consent decree in the form  
19 presented, or  
20 b. The above-referenced EPA consent decree is not finalized and approved  
21 by the Court.

22 10. Nothing in the terms of this consent decree shall be construed to confer upon this  
23 Court jurisdiction to review any issues subject to EPA review under the Clean Air Act beyond  
24 what the Court would have absent this agreement.

25 11. The undersigned representatives of Plaintiffs Citizens for Clean Air and Sierra Club  
26 and Defendant State of Alaska certify that they are fully authorized by the party or the parties  
they represent to consent to the Court's entry of the terms and conditions of this decree.

1 IT IS SO ORDERED.

2 DATED this 23rd day of October, 2019.

3 

4 Thomas S. Zilly  
5 United States District Judge

6 Respectfully submitted this 11th day of October, 2019.

7 s/ Jeremy C. Lieb

8 Jeremy C. Lieb (WSB #47219)  
9 Erik Grafe (AK Bar #0804010) (*pro hac vice* pending)  
10 EARTHJUSTICE  
11 441 W 5th Avenue, Suite 301  
12 Anchorage, AK 99501  
13 T: 907.277.2500  
14 F: 907.277.1390  
15 E: jlieb@earthjustice.org  
16 egrafe@earthjustice.org

13 Kristen L. Boyles (WSB #23806)  
14 EARTHJUSTICE  
15 705 Second Avenue, Suite 203  
16 Seattle, WA 98104  
17 T: 206.343.7340  
18 F: 206.343.1526  
19 E: kboyles@earthjustice.org

17 *Attorneys for Citizens for Clean Air, a project of Alaska  
Community Action on Toxics, and Sierra Club*

18 s/ Emma Pokon

19 Emma Pokon (Alaska Bar No. 1011112)  
20 ALASKA DEPARTMENT OF LAW,  
21 Office of the Attorney General  
22 1031 W. 4th Avenue, Suite 200  
23 Anchorage, AK 99501  
24 Tel: (907) 269-5100  
25 Email: emma.pokon@alaska.gov

23 *Attorney for Defendant-Intervenor  
State of Alaska*