

1 Defendant Lisa P. Jackson, in her official capacity as Administrator of the United States
2 Environmental Protection Agency (“EPA”), hereby lodges with the Court a proposed consent
3 decree to be noticed for public comment that contains the terms of a proposed settlement of this
4 action. *See* Attachment 1, Consent Decree.

5 **The proposed consent decree should not be signed or entered by the Court at this**
6 **time.** Pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the EPA
7 Administrator must provide “a reasonable opportunity by notice in the Federal Register to
8 persons who are not named as parties or intervenors to the action or matter to comment in
9 writing” upon the proposed consent decree. Accordingly, EPA will publish in the Federal
10 Register a notice of the proposed consent decree and request public comments. After a
11 reasonable comment period, the EPA Administrator will promptly consider any written
12 comments received and, if none of the comments disclose facts or considerations which indicate
13 that the proposed consent decree is inappropriate, improper, inadequate, or inconsistent with the
14 requirements of the Clean Air Act, EPA will move for entry of the decree.

15 Respectfully submitted,

16 Dated: July 6, 2010

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20 /s/ Rochelle L. Russell

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27 UNITED STATES DISTRICT COURT
 28 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

22 SIERRA CLUB,)	Case No. 09-cv-00152 SBA
)	
23 <i>Plaintiff,</i>)	CONSENT DECREE
)	
24 v.)	
)	
25 LISA P. JACKSON, Administrator, United)	
26 States Environmental Protection Agency, in her)	
official capacity,)	
27 <i>Defendant.</i>)	
)	

1 WHEREAS, on January 13, 2009, Plaintiff Sierra Club filed the above-captioned matter
 2 against Lisa P. Jackson, in her official capacity as Administrator of the United States
 3 Environmental Protection Agency (hereinafter “EPA” or “Defendant”);^{1/}

4 WHEREAS, Plaintiff alleges that EPA failed to perform its obligations under Clean Air
 5 Act (“CAA”) section 112(d)(6), 42 U.S.C. § 7412(d)(6), to “review, and revise as necessary
 6 (taking into account developments in practices, processes, and control technologies)” the section
 7 112(d) emission standards identified in Paragraph 1 of the Complaint within 8 years of the
 8 promulgation of such standards, *see* Compl. ¶¶ 1, 26 (Dkt. No. 1);

9 WHEREAS, Plaintiff alleges that for each source category identified in the Complaint,
 10 EPA failed to perform its obligations under CAA section 112(f)(2), 42 U.S.C. § 7412(f)(2),
 11 within 8 years of the promulgation of the section 112(d) emission standards identified in
 12 Paragraph 1 of the Complaint, to “promulgate standards [under section 112(f)(2)] for such
 13 category or subcategory if promulgation of such standards is required in order to provide an
 14 ample margin of safety to protect public health . . . or to prevent, taking into consideration costs,
 15 energy, safety, and other relevant factors, an adverse environmental effect,” *see* Compl. ¶¶ 1, 27;

16 WHEREAS, the Complaint identifies 28 source categories for which EPA has allegedly
 17 failed to complete its CAA section 112(d)(6) and (f)(2) obligations, *see* Compl. ¶¶ 1, 13;

18 WHEREAS, the emission standards for these 28 source categories are set forth in 27
 19 different National Emission Standards for Hazardous Air Pollutants (“NESHAP”), which are
 20 listed in the Complaint by the relevant Federal Register notice, and include the following, *see*
 21 Compl. ¶¶ 1, 13:

22 (1) Marine Tank Vessel Loading Operations, 60 Fed. Reg. 48,388 (Sept. 19, 1995) (40
 23 C.F.R. pt. 63 subpt. Y), Compl. ¶ 13(6);

24 (2) Pharmaceuticals Production, 63 Fed. Reg. 50,280 (Sept. 21, 1998) (40 C.F.R. pt. 63
 25 subpt. GGG), Compl. ¶ 13(10);

26
 27
 28 ^{1/} Lisa P. Jackson has been substituted for Stephen L. Johnson as Defendant in this matter
 pursuant to Federal Rule of Civil Procedure 25(d).

1 (3) Printing and Publishing Industry, 61 Fed. Reg. 27,132 (May 30, 1996) (40 C.F.R. pt.
2 63 subpt. KK), Compl. ¶ 13(19);

3 (4) Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 60
4 Fed. Reg. 4,948 (Jan. 25, 1995) (40 C.F.R. pt. 63 subpt. N), Compl. ¶ 13(2);

5 (5) Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration Plants,
6 64 Fed. Reg. 33,202 (June 22, 1999) (40 C.F.R. pt. 63 subpt. CCC), Compl. ¶ 13(24);

7 (6) Group I Polymers and Resins, 61 Fed. Reg. 46,906 (Sept. 5, 1996) (40 C.F.R. pt. 63
8 subpt. U), Compl. ¶ 13(13);

9 (7) Shipbuilding and Ship Repair (Surface Coating) Operations, 60 Fed. Reg. 64,330
10 (Dec. 15, 1995) (40 C.F.R. pt. 63 subpt. II), Compl. ¶ 13(23);

11 (8) Wood Furniture Manufacturing Operations, 60 Fed. Reg. 62,930 (Dec. 7, 1995) (40
12 C.F.R. pt. 63 subpt. JJ), Compl. ¶ 13(25);

13 (9) Primary Lead Smelting, 64 Fed. Reg. 30,194 (June 4, 1999) (40 C.F.R. pt. 63 subpt.
14 TTT), Compl. ¶ 13(18);

15 (10) Secondary Lead Smelting, 60 Fed. Reg. 32,587 (June 23, 1995) (40 C.F.R. pt. 63
16 subpt. X), Compl. ¶ 13(22);

17 (11) Pulp and Paper Production Industry, 63 Fed. Reg. 18,504 (Apr. 15, 1998) (40 C.F.R.
18 pt. 63 subpt. S), Compl. ¶ 13(20);

19 (12) Aerospace Manufacturing and Rework Facilities, 60 Fed. Reg. 45,948 (Sept. 1,
20 1995) (40 C.F.R. pt. 63 subpt. GG), Compl. ¶ 13(1);

21 (13) Mineral Wool Production, 64 Fed. Reg. 29,490 (June 1, 1999) (40 C.F.R. pt. 63
22 subpt. DDD), Compl. ¶ 13(7);

23 (14) Primary Aluminum Reduction Plants, 62 Fed. Reg. 52,384 (Oct. 7, 1997) (40 C.F.R.
24 pt. 63 subpt. LL), Compl. ¶ 13(17);

25 (15) Ferroalloys Production: Ferromanganese and Silicomanganese, 64 Fed. Reg. 27,450
26 (May 20, 1999) (40 C.F.R. pt. 63 subpt. XXX), Compl. ¶ 13(3);

27 (16) Wool Fiberglass Manufacturing, 64 Fed. Reg. 31,695 (June 14, 1999) (40 C.F.R. pt.
28 63 subpt. NNN), Compl. ¶ 13(26);

1 (17) Secondary Aluminum Production, 65 Fed. Reg. 15,690 (Mar. 23, 2000) (40 C.F.R.
2 pt. 63 subpt. RRR), Compl. ¶ 13(21);

3 (18) Pesticide Active Ingredient Production, 64 Fed. Reg. 33,550 (June 23, 1999) (40
4 C.F.R. pt. 63 subpt. MMM), Compl. ¶ 13(9);

5 (19) Polyether Polyols Production, 64 Fed. Reg. 29,420 (June 1, 1999) (40 C.F.R. pt. 63
6 subpt. PPP), Compl. ¶ 13(12);

7 (20) Group IV Polymers and Resins, 61 Fed. Reg. 48,208 (Sept. 12, 1996) (40 C.F.R. pt.
8 63 subpt. JJJ), Compl. ¶ 13(15);

9 (21) Flexible Polyurethane Foam Production, 63 Fed. Reg. 53,980 (Oct. 7, 1998) (40
10 C.F.R. pt. 63 subpt. III), Compl. ¶ 13(4);

11 (22) Generic MACT- Acrylic and Modacrylic Fibers Production, 64 Fed. Reg. 34,854
12 (June 29, 1999) (40 C.F.R. pt. 63 subpt. YY), Compl. ¶ 13(5);

13 (23) Generic MACT- Polycarbonate Production, 64 Fed. Reg. 34,854 (June 29, 1999) (40
14 C.F.R. pt. 63 subpt. YY), Compl. ¶ 13(5);

15 (24) Off-Site Waste and Recovery Operations, 61 Fed. Reg. 34,140 (July 1, 1996) (40
16 C.F.R. pt. 63 subpt. DD), Compl. ¶ 13(8);

17 (25) Phosphoric Acid Manufacturing, 64 Fed. Reg. 31,358 (June 10, 1999) (40 C.F.R. pt.
18 63 subpt. AA), Compl. ¶ 13(11);

19 (26) Phosphate Fertilizers Production Plants, 64 Fed. Reg. 31,358 (June 10, 1999) (40
20 C.F.R. pt. 63 subpt. BB), Compl. ¶ 13(11);

21 (27) Group III Polymers and Resins—Manufacture of Amino/Phenolic Resins, 65 Fed.
22 Reg. 3,276 (Jan. 20, 2000) (40 C.F.R. pt. 63 subpt. OOO), Compl. ¶ 13(14);

23 (28) Portland Cement Manufacturing Industry, 64 Fed. Reg. 31,898 (June 14, 1999) (40
24 C.F.R. pt. 63 subpt. LLL), Compl. ¶ 13(16).^{2/}

25 _____
26 ^{2/} The emission standards for the source categories identified in items 22-23 and 25-26 were
27 addressed in the same Federal Register notices, 64 Fed. Reg. 34,854 (June 29, 1999) and 64 Fed.
28 Reg. 31,358 (June 10, 1999), respectively, and thus were addressed in the same paragraphs of the
Complaint, as cited above. For clarity, this Consent Decree identifies each source category by
separate paragraph.

1 WHEREAS, the relief requested in the Complaint includes, among other things, an order
2 from this Court to establish a date certain by which EPA must fulfill each of its listed obligations
3 for each of the source categories listed herein;

4 WHEREAS, EPA has not taken final action pursuant to CAA sections 112(d)(6) or
5 112(f)(2) with respect to the source categories identified in the Complaint, *see* EPA Answer ¶ 13
6 (Dkt. No. 43);

7 WHEREAS, Plaintiff and EPA have agreed to a settlement of this action without
8 admission of any issue of fact or law, except as expressly provided herein;

9 WHEREAS, Plaintiff and EPA, by entering into this Consent Decree, do not waive or
10 limit any claim, remedy, or defense, on any grounds, related to any final EPA action;

11 WHEREAS, Plaintiff and EPA consider this Consent Decree to be an adequate and
12 equitable resolution of all the claims in this matter and therefore wish to effectuate a settlement;

13 WHEREAS, it is in the interest of the public, Plaintiff Sierra Club, Defendant EPA, and
14 judicial economy to resolve this matter without protracted litigation;

15 WHEREAS, Plaintiff and EPA agree that this Court has jurisdiction over this matter
16 pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that
17 venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(e) and N.D.
18 Cal. Civ. Local Rule 3-2(c)-(d);

19 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree is
20 fair, reasonable, in the public interest, and consistent with the Clean Air Act;

21 NOW THEREFORE, before the taking of testimony, without trial or determination of
22 any issues of fact or law, and upon the consent of Plaintiff Sierra Club and Defendant EPA, it is
23 hereby ordered, adjudged and decreed that:

24 1. For the Marine Tank Vessel Loading Operations source category, the EPA
25 Administrator shall:

26 (a) no later than September 14, 2010,

27 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart Y

28 (“NESHAP subpart Y”) under CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), or

1 sign a proposed determination that revision of NESHAP subpart Y is not
2 necessary under CAA section 112(d)(6); and

3 (ii) sign a proposed rule containing residual risk standards for this source category
4 under CAA section 112(f)(2), 42 U.S.C. § 7412(f)(2), or sign a proposed
5 determination that promulgation of such standards is not required under CAA
6 section 112(f)(2); and

7 (b) no later than March 31, 2011,

8 (i) sign a final rule promulgating revisions to NESHAP subpart Y under CAA
9 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
10 Y is not necessary under CAA section 112(d)(6); and

11 (ii) sign a final rule promulgating residual risk standards for this source category
12 under CAA section 112(f)(2) or sign a final determination that promulgation of
13 such standards is not required under CAA section 112(f)(2).

14 2. For the Pharmaceuticals Production source category, the EPA Administrator shall:

15 (a) no later than September 14, 2010,

16 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart GGG
17 (“NESHAP subpart GGG”) under CAA section 112(d)(6) or sign a proposed
18 determination that revision of NESHAP subpart GGG is not necessary under
19 CAA section 112(d)(6); and

20 (ii) sign a proposed rule containing residual risk standards for this source category
21 under CAA section 112(f)(2) or sign a proposed determination that promulgation
22 of such standards is not required under CAA section 112(f)(2); and

23 (b) no later than March 31, 2011,

24 (i) sign a final rule promulgating revisions to NESHAP subpart GGG under CAA
25 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
26 GGG is not necessary under CAA section 112(d)(6); and

1 (ii) sign a final rule promulgating residual risk standards for this source category
2 under CAA section 112(f)(2) or sign a final determination that promulgation of
3 such standards is not required under CAA section 112(f)(2).

4 3. For the Printing and Publishing Industry source category, the EPA Administrator
5 shall:

6 (a) no later than September 14, 2010,

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart KK
8 (“NESHAP subpart KK”) under CAA section 112(d)(6) or sign a proposed
9 determination that revision of NESHAP subpart KK is not necessary under CAA
10 section 112(d)(6); and

11 (ii) sign a proposed rule containing residual risk standards for this source category
12 under CAA section 112(f)(2) or sign a proposed determination that promulgation
13 of such standards is not required under CAA section 112(f)(2); and

14 (b) no later than March 31, 2011,

15 (i) sign a final rule promulgating revisions to NESHAP subpart KK under CAA
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
17 KK is not necessary under CAA section 112(d)(6); and

18 (ii) sign a final rule promulgating residual risk standards for this source category
19 under CAA section 112(f)(2) or sign a final determination that promulgation of
20 such standards is not required under CAA section 112(f)(2).

21 4. For the Hard and Decorative Chromium Electroplating and Chromium Anodizing
22 Tanks source category, the EPA Administrator shall:

23 (a) no later than September 14, 2010,

24 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart N
25 (“NESHAP subpart N”) under CAA section 112(d)(6) or sign a proposed
26 determination that revision of NESHAP subpart N is not necessary under CAA
27 section 112(d)(6); and

28

1 (ii) sign a proposed rule containing residual risk standards for this source category
2 under CAA section 112(f)(2) or sign a proposed determination that promulgation
3 of such standards is not required under CAA section 112(f)(2); and

4 (b) no later than June 30, 2011,

5 (i) sign a final rule promulgating revisions to NESHAP subpart N under CAA
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
7 N is not necessary under CAA section 112(d)(6); and

8 (ii) sign a final rule promulgating residual risk standards for this source category
9 under CAA section 112(f)(2) or sign a final determination that promulgation of
10 such standards is not required under CAA section 112(f)(2).

11 5. For the Steel Pickling–HCl Process Facilities and Hydrochloric Acid Regeneration
12 Plants source category, the EPA Administrator shall:

13 (a) no later than September 14, 2010,

14 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart CCC
15 (“NESHAP subpart CCC”) under CAA section 112(d)(6) or sign a proposed
16 determination that revision of NESHAP subpart CCC is not necessary under CAA
17 section 112(d)(6); and

18 (ii) sign a proposed rule containing residual risk standards for this source category
19 under CAA section 112(f)(2) or sign a proposed determination that promulgation
20 of such standards is not required under CAA section 112(f)(2); and

21 (b) no later than June 30, 2011,

22 (i) sign a final rule promulgating revisions to NESHAP subpart CCC under CAA
23 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
24 CCC is not necessary under CAA section 112(d)(6); and

25 (ii) sign a final rule promulgating residual risk standards for this source category
26 under CAA section 112(f)(2) or sign a final determination that promulgation of
27 such standards is not required under CAA section 112(f)(2).

28 6. For the Group I Polymers and Resins source category, the EPA Administrator shall:

1 (a) no later than September 14, 2010,

2 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart U
3 (“NESHAP subpart U”) under CAA section 112(d)(6) or sign a proposed
4 determination that revision of NESHAP subpart U is not necessary under CAA
5 section 112(d)(6); and

6 (ii) sign a proposed rule containing residual risk standards for this source category
7 under CAA section 112(f)(2) or sign a proposed determination that promulgation
8 of such standards is not required under CAA section 112(f)(2); and

9 (b) no later than June 30, 2011,

10 (i) sign a final rule promulgating revisions to NESHAP subpart U under CAA
11 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
12 U is not necessary under CAA section 112(d)(6); and

13 (ii) sign a final rule promulgating residual risk standards for this source category
14 under CAA section 112(f)(2) or sign a final determination that promulgation of
15 such standards is not required under CAA section 112(f)(2).

16 7. For the Shipbuilding and Ship Repair (Surface Coating) Operations source category,
17 the EPA Administrator shall:

18 (a) no later than October 29, 2010,

19 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart II
20 (“NESHAP subpart II”) under CAA section 112(d)(6) or sign a proposed
21 determination that revision of NESHAP subpart II is not necessary under CAA
22 section 112(d)(6); and

23 (ii) sign a proposed rule containing residual risk standards for this source category
24 under CAA section 112(f)(2) or sign a proposed determination that promulgation
25 of such standards is not required under CAA section 112(f)(2); and

26 (b) no later than October 31, 2011,
27
28

1 (i) sign a final rule promulgating revisions to NESHAP subpart II under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 II is not necessary under CAA section 112(d)(6); and

4 (ii) sign a final rule promulgating residual risk standards for this source category
5 under CAA section 112(f)(2) or sign a final determination that promulgation of
6 such standards is not required under CAA section 112(f)(2).

7 8. For the Wood Furniture Manufacturing Operations source category, the EPA
8 Administrator shall:

9 (a) no later than October 29, 2010,

10 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart JJ
11 (“NESHAP subpart JJ”) under CAA section 112(d)(6) or sign a proposed
12 determination that revision of NESHAP subpart JJ is not necessary under CAA
13 section 112(d)(6); and

14 (ii) sign a proposed rule containing residual risk standards for this source category
15 under CAA section 112(f)(2) or sign a proposed determination that promulgation
16 of such standards is not required under CAA section 112(f)(2); and

17 (b) no later than October 31, 2011,

18 (i) sign a final rule promulgating revisions to NESHAP subpart JJ under CAA
19 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
20 JJ is not necessary under CAA section 112(d)(6); and

21 (ii) sign a final rule promulgating residual risk standards for this source category
22 under CAA section 112(f)(2) or sign a final determination that promulgation of
23 such standards is not required under CAA section 112(f)(2).

24 9. For the Primary Lead Smelting source category, the EPA Administrator shall:

25 (a) no later than January 31, 2011,

26 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart TTT
27 (“NESHAP subpart TTT”) under CAA section 112(d)(6) or sign a proposed
28

1 determination that revision of NESHAP subpart TTT is not necessary under CAA
2 section 112(d)(6); and

3 (ii) sign a proposed rule containing residual risk standards for this source category
4 under CAA section 112(f)(2) or sign a proposed determination that promulgation
5 of such standards is not required under CAA section 112(f)(2); and

6 (b) no later than October 31, 2011,

7 (i) sign a final rule promulgating revisions to NESHAP subpart TTT under CAA
8 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
9 TTT is not necessary under CAA section 112(d)(6); and

10 (ii) sign a final rule promulgating residual risk standards for this source category
11 under CAA section 112(f)(2) or sign a final determination that promulgation of
12 such standards is not required under CAA section 112(f)(2).

13 10. For the Secondary Lead Smelting source category, the EPA Administrator shall:

14 (a) no later than April 29, 2011,

15 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart X
16 (“NESHAP subpart X”) under CAA section 112(d)(6) or sign a proposed
17 determination that revision of NESHAP subpart X is not necessary under CAA
18 section 112(d)(6); and

19 (ii) sign a proposed rule containing residual risk standards for this source category
20 under CAA section 112(f)(2) or sign a proposed determination that promulgation
21 of such standards is not required under CAA section 112(f)(2); and

22 (b) no later than December 16, 2011,

23 (i) sign a final rule promulgating revisions to NESHAP subpart X under CAA
24 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
25 X is not necessary under CAA section 112(d)(6); and

26 (ii) sign a final rule promulgating residual risk standards for this source category
27 under CAA section 112(f)(2) or sign a final determination that promulgation of
28 such standards is not required under CAA section 112(f)(2).

1 11. For the Pulp and Paper Production Industry source category, the EPA Administrator
2 shall:

3 (a) no later than June 15, 2011,

4 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart S
5 (“NESHAP subpart S”) under CAA section 112(d)(6) or sign a proposed
6 determination that revision of NESHAP subpart S is not necessary under CAA
7 section 112(d)(6); and

8 (ii) sign a proposed rule containing residual risk standards for this source category
9 under CAA section 112(f)(2) or sign a proposed determination that promulgation
10 of such standards is not required under CAA section 112(f)(2); and

11 (b) no later than December 16, 2011,

12 (i) sign a final rule promulgating revisions to NESHAP subpart S under CAA
13 section 112(d)(6) or sign a final determination that revision of NESHAP subpart S
14 is not necessary under CAA section 112(d)(6); and

15 (ii) sign a final rule promulgating residual risk standards for this source category
16 under CAA section 112(f)(2) or sign a final determination that promulgation of
17 such standards is not required under CAA section 112(f)(2).

18 12. For the Aerospace Manufacturing and Rework Facilities source category, the EPA
19 Administrator shall:

20 (a) no later than August 31, 2011,

21 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart GG
22 (“NESHAP subpart GG”) under CAA section 112(d)(6) or sign a proposed
23 determination that revision of NESHAP subpart GG is not necessary under CAA
24 section 112(d)(6); and

25 (ii) sign a proposed rule containing residual risk standards for this source category
26 under CAA section 112(f)(2) or sign a proposed determination that promulgation
27 of such standards is not required under CAA section 112(f)(2); and

28 (b) no later than June 29, 2012,

1 (i) sign a final rule promulgating revisions to NESHAP subpart GG under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 GG is not necessary under CAA section 112(d)(6); and

4 (ii) sign a final rule promulgating residual risk standards for this source category
5 under CAA section 112(f)(2) or sign a final determination that promulgation of
6 such standards is not required under CAA section 112(f)(2).

7 13. For the Mineral Wool Production source category, the EPA Administrator shall:

8 (a) no later than October 31, 2011,

9 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart DDD
10 (“NESHAP subpart DDD”) under CAA section 112(d)(6) or sign a proposed
11 determination that revision of NESHAP subpart DDD is not necessary under
12 CAA section 112(d)(6); and

13 (ii) sign a proposed rule containing residual risk standards for this source category
14 under CAA section 112(f)(2) or sign a proposed determination that promulgation
15 of such standards is not required under CAA section 112(f)(2); and

16 (b) no later than June 29, 2012,

17 (i) sign a final rule promulgating revisions to NESHAP subpart DDD under CAA
18 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
19 DDD is not necessary under CAA section 112(d)(6); and

20 (ii) sign a final rule promulgating residual risk standards for this source category
21 under CAA section 112(f)(2) or sign a final determination that promulgation of
22 such standards is not required under CAA section 112(f)(2).

23 14. For the Primary Aluminum Reduction Plants source category, the EPA Administrator
24 shall:

25 (a) no later than October 31, 2011,

26 (i) sign a proposed rule containing revisions to the 40 C.F.R. part 63, subpart LL
27 (“NESHAP subpart LL”) under CAA section 112(d)(6) or sign a proposed
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1 determination that revision of NESHAP subpart LL is not necessary under CAA
2 section 112(d)(6); and

3 (ii) sign a proposed rule containing residual risk standards for this source category
4 under CAA section 112(f)(2) or sign a proposed determination that promulgation
5 of such standards is not required under CAA section 112(f)(2); and

6 (b) no later than June 29, 2012,

7 (i) sign a final rule promulgating revisions to NESHAP subpart LL under CAA
8 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
9 LL is not necessary under CAA section 112(d)(6); and

10 (ii) sign a final rule promulgating residual risk standards for this source category
11 under CAA section 112(f)(2) or sign a final determination that promulgation of
12 such standards is not required under CAA section 112(f)(2).

13 15. For the Ferroalloys Production: Ferromanganese and Silicomanganese source
14 category, the EPA Administrator shall:

15 (a) no later than October 31, 2011,

16 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart XXX
17 (“NESHAP subpart XXX”) under CAA section 112(d)(6) or sign a proposed
18 determination that revision of NESHAP subpart XXX is not necessary under
19 CAA section 112(d)(6); and

20 (ii) sign a proposed rule containing residual risk standards for this source category
21 under CAA section 112(f)(2) or sign a proposed determination that promulgation
22 of such standards is not required under CAA section 112(f)(2); and

23 (b) no later than June 29, 2012,

24 (i) sign a final rule promulgating revisions to the NESHAP subpart XXX under
25 CAA section 112(d)(6) or sign a final determination that revision of NESHAP
26 subpart XXX is not necessary under CAA section 112(d)(6); and

1 (ii) sign a final rule promulgating residual risk standards for this source category
2 under CAA section 112(f)(2) or sign a final determination that promulgation of
3 such standards is not required under CAA section 112(f)(2).

4 16. For the Wool Fiberglass Manufacturing source category, the EPA Administrator
5 shall:

6 (a) no later than October 31, 2011,

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart NNN
8 (“NESHAP subpart NNN”) under CAA section 112(d)(6) or sign a proposed
9 determination that revision of NESHAP subpart NNN is not necessary under
10 CAA section 112(d)(6); and

11 (ii) sign a proposed rule containing residual risk standards for this source category
12 under CAA section 112(f)(2) or sign a proposed determination that promulgation
13 of such standards is not required under CAA section 112(f)(2); and

14 (b) no later than June 29, 2012,

15 (i) sign a final rule promulgating revisions to NESHAP subpart NNN under CAA
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
17 NNN is not necessary under CAA section 112(d)(6); and

18 (ii) sign a final rule promulgating residual risk standards for this source category
19 under CAA section 112(f)(2) or sign a final determination that promulgation of
20 such standards is not required under CAA section 112(f)(2).

21 17. For the Secondary Aluminum Production source category, the EPA Administrator
22 shall:

23 (a) no later than November 30, 2011,

24 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart RRR
25 (“NESHAP subpart RRR”) under CAA section 112(d)(6) or sign a proposed
26 determination that revision of NESHAP subpart RRR is not necessary under CAA
27 section 112(d)(6); and
28

1 (ii) sign a proposed rule containing residual risk standards for this source category
2 under CAA section 112(f)(2) or sign a proposed determination that promulgation
3 of such standards is not required under CAA section 112(f)(2); and

4 (b) no later than August 31, 2012,

5 (i) sign a final rule promulgating revisions to NESHAP subpart RRR under CAA
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
7 RRR is not necessary under CAA section 112(d)(6); and

8 (ii) sign a final rule promulgating residual risk standards for this source category
9 under CAA section 112(f)(2) or sign a final determination that promulgation of
10 such standards is not required under CAA section 112(f)(2).

11 18. For the Pesticide Active Ingredient Production source category, the EPA
12 Administrator shall:

13 (a) no later than November 30, 2011,

14 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart MMM
15 (“NESHAP subpart MMM”) under CAA section 112(d)(6) or sign a proposed
16 determination that revision of NESHAP subpart MMM is not necessary under
17 CAA section 112(d)(6); and

18 (ii) sign a proposed rule containing residual risk standards for this source category
19 under CAA section 112(f)(2) or sign a proposed determination that promulgation
20 of such standards is not required under CAA section 112(f)(2); and

21 (b) no later than November 30, 2012,

22 (i) sign a final rule promulgating revisions to NESHAP subpart MMM under
23 CAA section 112(d)(6) or sign a final determination that revision of NESHAP
24 subpart MMM is not necessary under CAA section 112(d)(6); and

25 (ii) sign a final rule promulgating residual risk standards for this source category
26 under CAA section 112(f)(2) or sign a final determination that promulgation of
27 such standards is not required under CAA section 112(f)(2).
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1 19. For the Polyether Polyols Production source category, the EPA Administrator shall:

2 (a) no later than November 30, 2011,

3 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart PPP
4 (“NESHAP subpart PPP”) under CAA section 112(d)(6) or sign a proposed
5 determination that revision of NESHAP subpart PPP is not necessary under CAA
6 section 112(d)(6); and

7 (ii) sign a proposed rule containing residual risk standards for this source category
8 under CAA section 112(f)(2) or sign a proposed determination that promulgation
9 of such standards is not required under CAA section 112(f)(2); and

10 (b) no later than November 30, 2012,

11 (i) sign a final rule promulgating revisions to NESHAP subpart PPP under CAA
12 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
13 PPP is not necessary under CAA section 112(d)(6); and

14 (ii) sign a final rule promulgating residual risk standards for this source category
15 under CAA section 112(f)(2) or sign a final determination that promulgation of
16 such standards is not required under CAA section 112(f)(2).

17 20. For the Group IV Polymers and Resins source category, the EPA Administrator
18 shall:

19 (a) no later than November 30, 2011,

20 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart JJJ
21 (“NESHAP subpart JJJ”) under CAA section 112(d)(6) or sign a proposed
22 determination that revision of NESHAP subpart JJJ is not necessary under CAA
23 section 112(d)(6); and

24 (ii) sign a proposed rule containing residual risk standards for this source category
25 under CAA section 112(f)(2) or sign a proposed determination that promulgation
26 of such standards is not required under CAA section 112(f)(2); and

27 (b) no later than November 30, 2012,
28

1 (i) sign a final rule promulgating revisions to NESHAP subpart JJJ under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 JJJ is not necessary under CAA section 112(d)(6); and

4 (ii) sign a final rule promulgating residual risk standards for this source category
5 under CAA section 112(f)(2) or sign a final determination that promulgation of
6 such standards is not required under CAA section 112(f)(2).

7 21. For the Flexible Polyurethane Foam Production source category, the EPA
8 Administrator shall:

9 (a) no later than October 31, 2012,

10 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart III
11 (“NESHAP subpart III”) under CAA section 112(d)(6) or sign a proposed
12 determination that revision of NESHAP subpart III is not necessary under CAA
13 section 112(d)(6); and

14 (ii) sign a proposed rule containing residual risk standards for this source category
15 under CAA section 112(f)(2) or sign a proposed determination that promulgation
16 of such standards is not required under CAA section 112(f)(2); and

17 (b) no later than October 31, 2013,

18 (i) sign a final rule promulgating revisions to NESHAP subpart III under CAA
19 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
20 III is not necessary under CAA section 112(d)(6); and

21 (ii) sign a final rule promulgating residual risk standards for this source category
22 under CAA section 112(f)(2) or sign a final determination that promulgation of
23 such standards is not required under CAA section 112(f)(2).

24 22. For the Acrylic and Modacrylic Fibers Production source category, the EPA
25 Administrator shall:

26 (a) no later than October 31, 2012,

27 (i) sign a proposed rule containing revisions to the standards for this source
28 category in 40 C.F.R. part 63, subpart YY (“NESHAP subpart YY”) under CAA

1 section 112(d)(6) or sign a proposed determination that revision to the standards
2 for this source category in NESHAP subpart YY is not necessary under CAA
3 section 112(d)(6); and

4 (ii) sign a proposed rule containing residual risk standards for this source category
5 under CAA section 112(f)(2) or sign a proposed determination that promulgation
6 of such standards is not required under CAA section 112(f)(2); and

7 (b) no later than October 31, 2013,

8 (i) sign a final rule promulgating revisions to the standards for this source
9 category in NESHAP subpart YY under CAA section 112(d)(6) or sign a final
10 determination that revision of the standards for this source category in NESHAP
11 subpart YY is not necessary under CAA section 112(d)(6); and

12 (ii) sign a final rule promulgating residual risk standards for this source category
13 under CAA section 112(f)(2) or sign a final determination that promulgation of
14 such standards is not required under CAA section 112(f)(2).

15 23. For the Polycarbonate Production source category, the EPA Administrator shall:

16 (a) no later than October 31, 2012,

17 (i) sign a proposed rule containing revisions to the standards for this source
18 category in 40 C.F.R. part 63, subpart YY (“NESHAP subpart YY”) under CAA
19 section 112(d)(6) or sign a proposed determination that revision of the standards
20 for this source category in NESHAP subpart YY is not necessary under CAA
21 section 112(d)(6); and

22 (ii) sign a proposed rule containing residual risk standards for this source category
23 under CAA section 112(f)(2) or sign a proposed determination that promulgation
24 of such standards is not required under CAA section 112(f)(2); and

25 (b) no later than October 31, 2013,

26 (i) sign a final rule promulgating revisions to the standards for this source
27 category in NESHAP subpart YY under CAA section 112(d)(6) or sign a final
28

1 determination that revision of the standards in NESHAP subpart YY for this
2 source category is not necessary under CAA section 112(d)(6); and
3 (ii) sign a final rule promulgating residual risk standards for this source category
4 under CAA section 112(f)(2) or sign a final determination that promulgation of
5 such standards is not required under CAA section 112(f)(2).

6 24. For the Off-Site Waste and Recovery Operations source category, the EPA
7 Administrator shall:

8 (a) no later than October 31, 2012,

9 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart DD
10 (“NESHAP subpart DD”) under CAA section 112(d)(6) or sign a proposed
11 determination that revision of NESHAP subpart DD is not necessary under CAA
12 section 112(d)(6); and

13 (ii) sign a proposed rule containing residual risk standards for this source category
14 under CAA section 112(f)(2) or sign a proposed determination that promulgation
15 of such standards is not required under CAA section 112(f)(2); and

16 (b) no later than October 31, 2013,

17 (i) sign a final rule promulgating revisions to NESHAP subpart DD under CAA
18 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
19 DD is not necessary under CAA section 112(d)(6); and

20 (ii) sign a final rule promulgating residual risk standards for this source category
21 under CAA section 112(f)(2) or sign a final determination that promulgation of
22 such standards is not required under CAA section 112(f)(2).

23 25. For the Phosphoric Acid Manufacturing source category, the EPA Administrator
24 shall:

25 (a) no later than October 31, 2012,

26 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart AA
27 (“NESHAP subpart AA”) under CAA section 112(d)(6) or sign a proposed
28

- 1 determination that revision of NESHAP subpart AA is not necessary under CAA
2 section 112(d)(6); and
- 3 (ii) sign a proposed rule containing residual risk standards for this source category
4 under CAA section 112(f)(2) or sign a proposed determination that promulgation
5 of such standards is not required under CAA section 112(f)(2); and
- 6 (b) no later than October 31, 2013,
- 7 (i) sign a final rule promulgating revisions to NESHAP subpart AA under CAA
8 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
9 AA is not necessary under CAA section 112(d)(6); and
- 10 (ii) sign a final rule promulgating residual risk standards for this source category
11 under CAA section 112(f)(2) or sign a final determination that promulgation of
12 such standards is not required under CAA section 112(f)(2).

13 26. For the Phosphate Fertilizers Production Plants source category, the EPA
14 Administrator shall:

- 15 (a) no later than October 31, 2012,
- 16 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart BB
17 (“NESHAP subpart BB”) under CAA section 112(d)(6) or sign a proposed
18 determination that revision of NESHAP subpart BB is not necessary under CAA
19 section 112(d)(6); and
- 20 (ii) sign a proposed rule containing residual risk standards for this source category
21 under CAA section 112(f)(2) or sign a proposed determination that promulgation
22 of such standards is not required under CAA section 112(f)(2); and
- 23 (b) no later than October 31, 2013,
- 24 (i) sign a final rule promulgating revisions to NESHAP subpart BB under CAA
25 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
26 BB is not necessary under CAA section 112(d)(6); and

27
28

1 (ii) sign a final rule promulgating residual risk standards for this source category
2 under CAA section 112(f)(2) or sign a final determination that promulgation of
3 such standards is not required under CAA section 112(f)(2).

4 27. For the Group III Polymers and Resins – Manufacture of Amino/Phenolic Resins
5 source category, the EPA Administrator shall:

6 (a) no later than October 31, 2012,

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart OOO
8 (“NESHAP subpart OOO”) under CAA section 112(d)(6) or sign a proposed
9 determination that revision of NESHAP subpart OOO is not necessary under
10 CAA section 112(d)(6); and

11 (ii) sign a proposed rule containing residual risk standards for this source category
12 under CAA section 112(f)(2) or sign a proposed determination that promulgation
13 of such standards is not required under CAA section 112(f)(2); and

14 (b) no later than October 31, 2013,

15 (i) sign a final rule promulgating revisions to NESHAP subpart OOO under CAA
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
17 OOO is not necessary under CAA section 112(d)(6); and

18 (ii) sign a final rule promulgating residual risk standards for this source category
19 under CAA section 112(f)(2) or sign a final determination that promulgation of
20 such standards is not required under CAA section 112(f)(2).

21 28. For the Portland Cement Manufacturing Industry source category, the EPA
22 Administrator shall:

23 (a) no later than June 15, 2017,

24 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart LLL
25 (“NESHAP subpart LLL”) under CAA section 112(d)(6) or sign a proposed
26 determination that revision of NESHAP subpart LLL is not necessary under CAA
27 section 112(d)(6); and
28

1 (ii) sign a proposed rule containing residual risk standards for this source category
2 under CAA section 112(f)(2) or sign a proposed determination that promulgation
3 of such standards is not required under CAA section 112(f)(2); and

4 (b) no later than June 15, 2018,

5 (i) sign a final rule promulgating revisions to NESHAP subpart LLL under CAA
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
7 LLL is not necessary under CAA section 112(d)(6); and

8 (ii) sign a final rule promulgating residual risk standards for this source category
9 under CAA section 112(f)(2) or sign a final determination that promulgation of
10 such standards is not required under CAA section 112(f)(2).

11 29. Within fifteen (15) business days of signing a proposed or final rule or proposed or
12 final determination as described in Paragraphs 1 through 28 of this Consent Decree, EPA shall
13 deliver it to the Office of the Federal Register for prompt publication. In addition, EPA shall
14 provide notice and make available to Plaintiff a copy of each such rule or determination within
15 five (5) business days of delivery to the Office of the Federal Register.

16 30. Once EPA has completed all of the actions set forth in Paragraphs 1 through 29 of
17 this Consent Decree, EPA may move to have this Decree terminated. Plaintiff shall have
18 fourteen (14) days in which to respond to such motion.

19 31. The deadlines established in Paragraphs 1 through 28 may be extended (a) by written
20 stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon motion of EPA
21 for good cause shown and upon consideration of any response by Plaintiff. Any other provision
22 of this Consent Decree may be modified by the Court following motion of either Plaintiff or EPA
23 for good cause shown and upon consideration of any response by the non-moving party.

24 32. In the event of a dispute between Plaintiff and EPA concerning the interpretation or
25 implementation of any aspect of this Consent Decree, the disputing party shall provide the other
26 party with a written notice outlining the nature of the dispute and requesting informal
27 negotiations. These parties shall meet and confer in order to attempt to resolve the dispute. If
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1 these parties are unable to resolve the dispute within ten (10) business days after receipt of the
2 notice, either party may petition the Court to resolve the dispute.

3 33. No motion or other proceeding seeking to enforce this Consent Decree or for
4 contempt of Court shall be filed unless the procedure set forth in Paragraph 32 has been
5 followed.

6 34. This Court shall retain jurisdiction over this matter to enforce the terms of this
7 Consent Decree and to consider any requests for costs of litigation, including attorney fees.

8 35. Nothing in the terms of this Consent Decree shall be construed (a) to confer upon this
9 Court jurisdiction to review any final rule or determination issued by EPA pursuant to this
10 Consent Decree, (b) to confer upon this Court jurisdiction to review any issues that are within the
11 exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1), 42
12 U.S.C. § 7607(b)(1), or (c) to waive any claims, remedies, or defenses that the parties may have
13 under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

14 36. Nothing in this Consent Decree shall be construed to limit or modify any discretion
15 accorded EPA by the Clean Air Act or by general principles of administrative law in taking the
16 actions which are the subject of this Consent Decree, including the discretion to alter, amend, or
17 revise any final actions promulgated pursuant to this Consent Decree. EPA's obligation to
18 perform each action specified in this Consent Decree does not constitute a limitation or
19 modification of EPA's discretion within the meaning of this paragraph.

20 37. Except as expressly provided herein, nothing in this Consent Decree shall be
21 construed as an admission of any issue of fact or law nor to waive or limit any claim, remedy, or
22 defense, on any grounds, related to any final action EPA takes with respect to the actions
23 addressed in this Consent Decree.

24 38. EPA and Plaintiff agree that, pursuant to CAA section 304(d), 42 U.S.C. § 7604(d),
25 Plaintiff is both eligible and entitled to recover its costs of litigation in this action, including
26 reasonable attorney fees, incurred prior to entry of this Consent Decree. The deadline for filing a
27 bill of costs pursuant to Local Rule 54-1 and a motion for costs of litigation, including
28 reasonable attorney fees, pursuant to Local Rule 54-6 for activities performed in this case prior to

1 entry of this Consent Decree, is hereby extended until 90 days after the date on which the Court
2 enters this Consent Decree. During this time the parties shall seek to resolve informally any
3 claim for costs of litigation, including reasonable attorney fees.

4 39. Plaintiff reserves the right to seek additional costs of litigation, including reasonable
5 attorney fees, incurred subsequent to entry of this Consent Decree and arising from Plaintiff's
6 need to enforce or defend against efforts to modify its terms or the underlying schedule outlined
7 herein, or for any other unforeseen continuation of this action. EPA reserves the right to oppose
8 any such request for additional costs of litigation, including reasonable attorney fees.

9 40. It is hereby expressly understood and agreed that this Consent Decree was jointly
10 drafted by Plaintiff and EPA. Accordingly, the parties hereby agree that any and all rules of
11 construction to the effect that ambiguity is construed against the drafting party shall be
12 inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent
13 Decree.

14 41. The parties agree and acknowledge that before this Consent Decree is entered by the
15 Court, EPA must provide notice of this Consent Decree in the Federal Register and an
16 opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After
17 this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney
18 General, as appropriate, shall promptly consider any such written comments in determining
19 whether to withdraw or withhold their consent to the Consent Decree, in accordance with CAA
20 section 113(g). If the Administrator and/or the Attorney General do not elect to withdraw or
21 withhold consent, EPA shall promptly file a motion that requests that the Court enter this
22 Consent Decree.

23 42. Any notices required or provided for by this Consent Decree shall be in writing, via
24 electronic mail or other means, and sent to the following (or to any new address of counsel as
25 filed and listed in the docket of the above-captioned matter, at a future date):

26 For Plaintiff Sierra Club: Emma C. Cheuse
27 James S. Pew
28 Earthjustice
1625 Massachusetts Avenue, N.W., Suite 702
Washington, D.C. 20036

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For Defendant EPA: Rochelle L. Russell
U.S. Department of Justice
Environment & Natural Resources Division
301 Howard Street, Suite 1050
San Francisco, CA 94105
Tel: (415) 744-6566
Email: rochelle.russell@usdoj.gov

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

44. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the proposed Consent Decree may not be used as evidence in any litigation between the parties.

45. The undersigned representatives of Plaintiff Sierra Club and Defendant EPA certify that they are fully authorized by the party they represent to consent to the Court's entry of the terms and conditions of this Decree.

SO ORDERED on this _____ day of _____, 2010.

SAUNDRA BROWN ARMSTRONG
United States District Judge

1 COUNSEL FOR PLAINTIFF:

2 Date: July 6, 2010

/s/ Emma C. Cheuse
EMMA C. CHEUSE
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(Appearing *Pro Hac Vice*, D.C. Bar No. 448830)
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Attorneys for Plaintiff Sierra Club

14
15 COUNSEL FOR DEFENDANT:

16 IGNACIA S. MORENO
17 Assistant Attorney General
18 Environment & Natural Resources Division

19 Date: July 6, 2010

/s/ Rochelle L. Russell
ROCHELLE L. RUSSELL
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Environmental Defense Section
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Attorneys for Defendant EPA