

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

STATEWIDE ORGANIZING FOR  
COMMUNITY EMPOWERMENT et al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY et al.,

Defendants.

Civil Action No. 22-cv-2562

Hon. Judge Bates

**PROPOSED CONSENT DECREE**

This consent decree is entered into by Plaintiffs Statewide Organizing for Community eMpowerment, Hoosier Environmental Council, Indiana State Conference and LaPorte County Branch of the National Association for the Advancement of Colored People, Sierra Club, Clean Power Lake County, and Environmental Integrity Project, and Defendants United States Environmental Protection Agency (EPA) and Michael S. Regan, in his official capacity as Administrator of EPA (each a Party and collectively the Parties).

WHEREAS, on August 25, 2022, Plaintiffs filed a complaint alleging that EPA violated Section 2002(b) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6912(b) (RCRA), by failing to perform its non-discretionary duty under 42 U.S.C. § 6912(b) to review and revise a regulation exempting inactive coal combustion residuals landfills, 40 C.F.R. § 257.50(d);

WHEREAS, the complaint requests, among other relief, declaratory judgment that EPA violated RCRA and an order compelling EPA to complete a review of 40 C.F.R. § 257.50(d) and

issue necessary revisions of the regulation in accordance with an expeditious deadline specified by the Court;

WHEREAS, EPA intends to complete a review of 40 C.F.R. § 257.50(d) and make any necessary revisions as part of a larger review of RCRA regulations;

WHEREAS, the Parties wish to settle this case without expensive and protracted litigation, and without a litigated resolution of any issue of law or fact;

WHEREAS, the Parties consider this consent decree to be an adequate and equitable resolution of the claims addressed; and

WHEREAS, the Court, by entering this consent decree, finds that it is fair, reasonable, in the public interest, and consistent with RCRA;

NOW THEREFORE, without determination of any issue of fact or law, and upon the Parties' consent, it is ORDERED that:

1. This Court has subject-matter jurisdiction to order the relief provided in this consent decree. Venue is proper in the U.S. District Court for the District of Columbia.
2. On or before May 5, 2023, EPA shall either complete its review of 40 C.F.R. § 257.50(d) and determine that no revision is necessary, or EPA shall sign a proposed rule to revise 40 C.F.R. § 257.50(d).
3. If EPA has issued a proposed rule in accordance with paragraph 2, on or before May 6, 2024, EPA shall sign for publication in the Federal Register a notice taking final action regarding EPA's proposed revision of 40 C.F.R. § 257.50(d).

4. Upon taking any action described in Paragraphs 2 and 3, the appropriate EPA official shall, within 10 business days of signature, forward each such document to the Office of the Federal Register for review and publication in the Federal Register.
5. Within 7 business days after forwarding the documents described in Paragraph 4, EPA shall send copies of those documents to Plaintiffs.
6. The deadlines established by this consent decree, including the periods set forth in Paragraphs 2 and 3, may be extended (A) by written stipulation of the Parties with notice to the Court, or (B) by the Court upon motion by EPA for good cause shown under the Federal Rules of Civil Procedure and upon consideration of any response by Plaintiffs and any reply by EPA. Any other provision of this consent decree may be modified by the Court following motion by a Party for good cause shown under the Federal Rules of Civil Procedure and upon consideration of any response by the non-moving Party and any reply.
7. The Parties recognize that the possibility exists that a lapse in the appropriations that fund EPA could delay compliance with the timetables in this consent decree. If a lapse in appropriations for EPA occurs within 120 days before any deadline in this decree, including but not limited to the periods set forth in Paragraphs 2 and 3, that deadline shall be automatically extended one day for each day of the lapse in appropriations such as in the event of a government shutdown. Nothing in this paragraph shall preclude EPA from seeking an additional extension through stipulation of the parties or modification of this consent decree under Paragraph 6.

8. The Parties shall not challenge in court this consent decree's terms or this Court's jurisdiction to enter and enforce this consent decree.
9. The Parties agree that this consent decree shall constitute a complete and final settlement of all claims that Plaintiffs have asserted in this case, except those fee claims described in Paragraph 19. Nothing in this consent decree shall limit or waive any claim related to the legal sufficiency of the final action undertaken by EPA pursuant to this consent decree.
10. The Court shall retain jurisdiction over this matter to enforce the terms of this consent decree, to resolve any disputes under it, and to consider any requests for costs of litigation, including attorney fees. After publication of notice in the Federal Register for the actions described in Paragraphs 2 and 3 has been completed and after resolution of Plaintiffs' claim for costs of litigation (including attorney fees), EPA may move to have this consent decree terminated. Plaintiffs shall have 30 days in which to respond to such motion (unless the Parties stipulate to a longer period).
11. Nothing in this consent decree shall be construed to limit or modify any discretion given to EPA by RCRA or by general principles of administrative law in taking the actions that are the subject of this consent decree, including discretion to alter, amend, or revise actions contemplated by this consent decree. EPA's obligation to perform the actions specified in Paragraphs 2 and 3 does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.
12. Nothing in this consent decree shall be construed as an admission of any issue of fact or law nor as a waiver or limitation regarding any claim or defense, on any grounds, related to any EPA action addressed in this decree or any aspect of the amended complaint.

13. Nothing in this consent decree shall be construed (A) to confer upon the District Court jurisdiction to review any final decision made by EPA under this decree or to review any issues that are within the exclusive jurisdiction of the U.S. Court of Appeals under 42 U.S.C. § 6976(a)(1), or (B) to waive any remedies or defenses the Parties may have under 42 U.S.C. § 6976(a)(1).
14. The Parties acknowledge that the obligations imposed on EPA under this consent 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 EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.
15. Any notices required or provided for by this consent decree shall be made in writing and sent to the following (or to any new address of counsel as filed and listed in the docket of this matter, at a future date):

For Plaintiffs:

Charles McPhedran  
Earthjustice  
1617 JFK Blvd., Suite 2020  
Philadelphia, PA 19103  
(215) 717-4521  
[cmcphe dran@earthjustice.org](mailto:cmcphe dran@earthjustice.org)

Mychal Ozaeta  
Earthjustice  
707 Wilshire Blvd., Suite 4300  
Los Angeles, CA 90017  
(213) 766-1069  
[mozaeta@earthjustice.org](mailto:mozaeta@earthjustice.org)

For Defendants:

Sarah Izfar  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
(202) 305-0490  
[sarah.izfar@usdoj.gov](mailto:sarah.izfar@usdoj.gov)

16. If the Parties dispute the interpretation or implementation of any aspect of this consent decree, the disputing Party shall provide the other Party with a written notice outlining the nature of the dispute and requesting informal negotiations. The Parties shall meet and confer to attempt to resolve the dispute. If the Parties cannot resolve the dispute within 10 business days after receipt of the notice (or a longer period as stipulated by the Parties), either Party may move the Court to resolve the dispute.
17. No motion or other proceeding seeking to enforce this consent decree or for contempt of Court shall be filed unless the Party seeking to enforce this decree has followed the procedure set forth in Paragraph 16.
18. It is expressly understood and agreed that this consent decree was jointly drafted by Plaintiffs and EPA. The Parties thus agree that any and all rules of construction that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning this decree's terms, meaning, or interpretation.
19. The deadline for filing a motion for Plaintiffs' costs of litigation (including reasonable attorney fees) for activities performed before entry of this consent decree is hereby extended until 90 days after this decree is entered by the Court. During this period, the

Parties shall seek to resolve informally any claim for costs of litigation (including reasonable attorney fees), and if they cannot, Plaintiffs will file a motion for costs of litigation (including reasonable attorney fees) or a stipulation or motion to extend the deadline to file such a motion. EPA reserves the right to oppose any such request.

20. The Parties agree and acknowledge that before this consent decree can be finalized and entered by the Court, EPA must provide notice of this decree in the Federal Register and an opportunity for public comment in accordance with the EPA Administrator's March 18, 2022, memorandum regarding "Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency." After this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any written comments in determining whether to withdraw or withhold their consent to this decree. If the Administrator and/or the Attorney General do not elect to withdraw or withhold consent, EPA shall promptly file a motion that requests that the Court enter this decree.
21. If for any reason the Court declines to approve this consent decree in the form presented, this agreement is voidable at the sole discretion of either Party and the proposed decree's terms may not be used as evidence in any litigation between the Parties.
22. This consent decree applies to, is binding upon, and inures to the benefit of the Parties (and their successors, assigns, and designees).
23. The undersigned representatives of the Parties 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 \_\_\_\_\_, 2022.

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John D. Bates  
United States District Judge

For Plaintiffs

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Charles McPhedran  
Earthjustice  
1617 JFK Blvd., Suite 2020  
Philadelphia, PA 19103  
(215) 717-4521  
[cmcphebran@earthjustice.org](mailto:cmcphebran@earthjustice.org)

Lisa Evans  
Earthjustice  
21 Ocean Ave.  
Marblehead, MA 01945  
(978) 548-8645  
[levans@earthjustice.org](mailto:levans@earthjustice.org)

Gavin Kearney  
Earthjustice  
311 South Wacker Dr., Ste. 1400  
Chicago, IL 60606  
(773) 828-0816  
[gkearney@earthjustice.org](mailto:gkearney@earthjustice.org)

Mychal Ozaeta  
Earthjustice  
707 Wilshire Blvd., Ste. 4300  
Los Angeles, CA 90017  
(213) 766-1069  
[mozaeta@earthjustice.org](mailto:mozaeta@earthjustice.org)

*Counsel for Plaintiffs*



Dated: \_\_\_\_\_

For Defendants

Todd Kim  
Assistant Attorney General

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Sarah Izfar  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
Tel: (202) 305-0490  
[sarah.izfar@usdoj.gov](mailto:sarah.izfar@usdoj.gov)

Dated: \_\_\_\_\_