

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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AIR ALLIANCE HOUSTON, <i>et al.</i> ,		)	
		)	
	Plaintiffs,	)	Case No. 12-1607 (RMC)
		)	
	v.	)	
		)	
GINA McCARTHY, Administrator, United		)	<b><u>CONSENT DECREE</u></b>
States Environmental Protection Agency, in		)	
her official capacity,		)	
		)	
	Defendant.	)	
		)	
		)	
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WHEREAS, on September 27, 2012, Plaintiffs Air Alliance Houston, California Communities Against Toxics, Coalition For A Safe Environment, Community In-Power and Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services (collectively, “Plaintiffs”) filed the above-captioned matter against Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA” or “Defendant”);<sup>1</sup>

WHEREAS, Plaintiffs allege that EPA failed to perform its obligations under Clean Air Act (“CAA”) section 112(d)(6), 42 U.S.C. § 7412(d)(6), to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies)” the national emission standards for hazardous air pollutants (“NESHAP”) for petroleum refineries

<sup>1</sup> Pursuant to FED. R. CIV. P. 25(d), Administrator Gina McCarthy is automatically substituted for former Acting Administrator Bob Perciasepe.

under 40 C.F.R. Part 63, Subparts CC and UUU within 8 years of the promulgation of such standards, *see* Complaint ¶¶ 36-37, 87, 89 (Dkt. 1);

WHEREAS, Plaintiffs allege that for Petroleum Refineries, 40 C.F.R. Part 63, Subpart CC (“NESHAP Subpart CC” or “Subpart CC”), and Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, 40 C.F.R. Part 63, Subpart UUU (“NESHAP Subpart UUU” or “Subpart UUU”), EPA failed to perform its obligations under CAA section 112(f)(2), 42 U.S.C. § 7412(f)(2), within 8 years of the promulgation of the section 112(d) emission standards identified above, to review and “promulgate standards [under section 112(f)(2)] for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health . . . or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect,” *see* Compl. ¶¶ 36-37, 87-88;

WHEREAS, the relief requested in the Complaint includes, among other things, an order from this Court to establish a date certain by which EPA must fulfill each of its listed CAA obligations for the above-described categories of petroleum refineries, *see* Compl. at 27;

WHEREAS, EPA has not promulgated a final rule or determination pursuant to section 112(d)(6) or section 112(f)(2) for petroleum refineries subject to Subpart CC or Subpart UUU as required by the CAA;

WHEREAS, before filing the Complaint in this action, Plaintiffs served notice on EPA as required by the CAA to inform EPA of Plaintiffs’ intent to initiate the present action;

WHEREAS, Plaintiffs and EPA (collectively, “the Parties”) have agreed to a settlement of this action without admission of any issue of fact or law, except as expressly provided herein;

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

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

WHEREAS, it is in the interest of the public, Plaintiffs, EPA, and judicial economy to resolve this matter without protracted litigation;

WHEREAS, the Parties agree that this Court has jurisdiction over this matter pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue is proper in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(e);

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

NOW THEREFORE, before the taking of testimony, without trial or determination of any issues of fact or law, and upon the consent of the Parties, it is hereby ordered, adjudged and decreed that:

1. This Court has jurisdiction over the claims set forth in the Complaint and may order the relief contained in the Consent Decree. Venue is proper in the United States District Court for the District of Columbia.

2. For Petroleum Refineries, 40 C.F.R. Part 63, Subpart CC, and Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, 40 C.F.R. Part 63, Subpart UUU, the EPA Administrator shall:

a. No later than May 15, 2014:

- (i) review and either sign a proposal to revise the emission standards in 40 C.F.R. Part 63, Subpart CC under CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), or sign a proposed determination that revision of Subpart CC is not necessary under CAA section 112(d)(6);
- (ii) review and either sign a proposal to revise the emission standards in 40 C.F.R. Part 63, Subpart UUU under CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), or sign a proposed determination that revision of Subpart UUU is not necessary under CAA section 112(d)(6);
- (iii) review and either sign a proposal to promulgate residual risk standards for the Petroleum Refineries source category subject to NESHAP Subpart CC under CAA section 112(f)(2), 42 U.S.C. § 7412(f)(2), or sign a proposed determination that promulgation of such standards is not required under CAA section 112(f)(2);  
and
- (iv) review and either sign a proposal to promulgate residual risk standards for the Petroleum Refineries source category subject to NESHAP Subpart UUU under CAA section 112(f)(2), 42 U.S.C. § 7412(f)(2), or sign a proposed determination that promulgation of such standards is not required under CAA section 112(f)(2);

b. No later than April 17, 2015:

- (i) sign a final rule promulgating revisions to the emission standards in NESHAP Subpart CC under CAA section 112(d)(6), or sign a final determination that revision of NESHAP Subpart CC is not necessary under CAA section 112(d)(6);
- (ii) sign a final rule promulgating revisions to the emission standards in NESHAP Subpart UUU under CAA section 112(d)(6), or sign a final determination that revision of NESHAP Subpart UUU is not necessary under CAA section 112(d)(6);
- (iii) sign a final rule promulgating residual risk standards for the Petroleum Refineries source category subject to NESHAP Subpart CC under CAA section 112(f)(2), or sign a final determination that promulgation of such standards is not required under CAA section 112(f)(2); and
- (iv) sign a final rule promulgating residual risk standards for the Petroleum Refineries source category subject to NESHAP Subpart UUU under CAA section 112(f)(2), or sign a final determination that promulgation of such standards is not required under CAA section 112(f)(2).

3. Within fifteen (15) days of signing each proposed rule or determination (or combination thereof) and each final rule or determination (or combination thereof) as described in paragraph 2 of this Consent Decree, EPA shall deliver signed notice of each such action to the Office of the Federal Register for prompt publication. Following such delivery to the Office of the Federal Register, EPA shall not take any action (other than is necessary to correct any

typographical errors or other errors in form) to delay or otherwise interfere with the publication of each such notice in the Federal Register. In addition, EPA shall provide a copy of each such notice to Plaintiffs within seven (7) days of delivery to the Office of the Federal Register.

4. Once EPA has completed all of the actions set forth above and after the final actions required by paragraph 2 have been published in the Federal Register, EPA may move to have this Consent Decree terminated, and the action dismissed. Plaintiffs shall have thirty (30) days in which to respond to such motion.

5. The deadlines established by this Consent Decree may be modified (a) by written stipulation of EPA and Plaintiffs with notice to the Court, or (b) by the Court on motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by Plaintiff(s). Any other provision of this Consent Decree also may be modified by the Court following motion of an undersigned party for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by a non-moving party.

6. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Consent Decree, the disputing party shall provide the other parties with a written notice outlining the nature of the dispute and requesting informal negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute. If the Parties are unable to resolve the dispute within fourteen (14) days after receipt of the notice, a party may petition the Court to resolve the dispute.

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

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

9. Nothing in this Consent 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 Consent Decree, including the discretion to alter, amend, or revise any final actions promulgated pursuant to this Consent Decree. EPA's obligation to perform each action specified in this Consent Decree does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

10. Except as expressly provided herein, nothing in this Consent Decree shall be construed as an admission of any issue of fact or law. By entering into this Consent Decree, EPA and Plaintiffs do not waive or limit any claim, remedy, or defense, on any grounds, related to any final action EPA takes with respect to the actions addressed in this Consent Decree.

11. The deadline for filing a motion for costs of litigation (including attorney fees) for activities performed prior to entry of the Consent Decree is hereby extended until ninety (90) days after this Consent Decree is entered by the Court. During this period, the Parties shall seek to resolve informally any claim for costs of litigation (including attorney fees), and if they cannot, Plaintiffs will file a motion for costs of litigation (including 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.

12. Plaintiffs reserve the right to seek additional costs of litigation, including attorney fees, incurred subsequent to entry of this Consent Decree and arising from Plaintiffs' need to enforce or defend against efforts to modify its terms or the underlying schedule outlined herein, or for any other unforeseen continuation of this action. EPA reserves the right to oppose any such request.

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

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

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



- a. For Plaintiffs California Communities Against Toxics, Coalition For A Safe Environment, and Del Amo Action Committee:

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- b. For Plaintiffs Air Alliance Houston, Community In-Power and Development Association, Environmental Integrity Project, Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services:

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- c. For Defendant EPA:

Michele L. Walter  
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Environment & Natural Resources Division  
P.O. Box 7611  
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16. EPA and Plaintiffs 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.

17. 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.

18. The undersigned representatives of Defendant EPA and Plaintiffs Air Alliance Houston, California Communities Against Toxics, Coalition For A Safe Environment, Community In-Power and Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services 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 Consent Decree.

COUNSEL FOR PLAINTIFFS:

Dated: January 13, 2014

/s/ Emma C. Cheuse  
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COUNSEL FOR DEFENDANT:

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

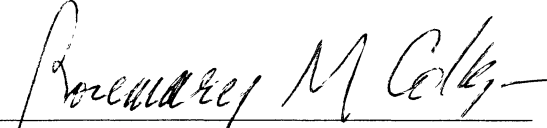
/s/ Michele L. Walter \_\_\_\_\_

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*Counsel for Defendant Gina McCarthy,  
Administrator United States Environmental  
Protection Agency*

SO ORDERED on this 3 day of February, 2014.

  
\_\_\_\_\_  
ROSEMARY M. COLLYER  
United States District Judge