

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

SIERRA CLUB,)
)
Plaintiff,)
)
v.)
)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and)
LISA P. JACKSON, Administrator,)
United States Environmental Protection)
Agency,)
)
Defendants.)
_____)

Case No.: 1:10-CV-01541-CKK

EPA’S NOTICE OF LODGING OF PROPOSED PARTIAL CONSENT DECREE

Defendants Environmental Protection Agency and Lisa P. Jackson, Administrator (“EPA”), with this notice lodge with the Court a proposed Partial Consent Decree that contains the terms of a proposed partial settlement between EPA and Plaintiff Sierra Club. *See Exhibit A. The proposed Partial Consent Decree should not be signed or entered by the Court at this time.*

Pursuant to 42 U.S.C. § 7413(g) and Paragraph 16 of the proposed Partial Consent Decree, after the proposed Partial Consent Decree is lodged with the Court, EPA will submit a notice of the proposed Partial Consent Decree for publication in the Federal Register, and will then accept public comment on the proposed Partial Consent Decree for 30 days. After the close of the public comment period, EPA will review the comments and will move the Court for entry of the proposed Partial Consent Decree if appropriate in light of the comments received.

Pursuant to 42 U.S.C. § 7413(g), the United States reserves the right to withhold or withdraw its consent to the entry of the proposed Partial Consent Decree if the comments received disclose facts which indicate that the proposed judgment is inappropriate, improper, or

inadequate. At the close of the public comment period, EPA will further advise the Court of the status of its consent to the proposed Partial Consent Decree.

Dated: September 13, 2011

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General

/s/ Stephanie J. Talbert
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Of Counsel for Defendant:
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing NOTICE OF LODGING OF PROPOSED PARTIAL CONSENT DECREE with the clerk of the court for the United States District Court for the District of Columbia using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record:

Khushi K. Desai
David S. Baron
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036

/s/ Stephanie J. Talbert
STEPHANIE J. TALBERT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB,)	
)	
Plaintiff,)	
)	
v.)	Case No. 10-cv-1541 (CKK)
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, and LISA P.)	
JACKSON, Administrator of the United States)	
Environmental Protection Agency,)	
)	
Defendant.)	
)	

PARTIAL CONSENT DECREE

WHEREAS, Plaintiff Sierra Club filed this action pursuant to section 304(a)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a)(2), alleging that Defendants United States Environmental Protection Agency and Lisa P. Jackson, Administrator of the United States Environmental Protection Agency (collectively “EPA”), failed to perform duties mandated by CAA section 110(c)(1) and (k)(2), 42 U.S.C. § 7410(c)(1), (k)(2), to: (1) promulgate a federal implementation plan (“FIP”) for the State of Texas that meets the requirements of CAA section 110(a)(2)(D)(i) for the 1997 fine particulate matter (“PM2.5”) and ozone national ambient air quality standards (“NAAQS”); (2) promulgate a FIP for the State of Texas that meets the requirements of CAA Section 110(a)(2) for the 1997 ozone NAAQS; and (3) take final approval/disapproval action pursuant to CAA section 110(k)(3) on the state implementation plan (“SIP”) that Texas submitted for implementation of the 1997 PM2.5 NAAQS;

WHEREAS, Plaintiff and EPA (collectively the “Parties”) wish to effectuate a settlement of the above-captioned case without expensive and protracted litigation and without the admission of any issue of fact or law;

WHEREAS, the Parties have jointly moved to stay Plaintiff’s claim with respect to EPA’s obligation to promulgate a FIP for the State of Texas that satisfies the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 ozone NAAQS and the 1997 PM2.5 NAAQS;

WHEREAS, the Parties consider this Partial Consent Decree to be an adequate and equitable resolution of the remaining claims in the above-captioned case;

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

WHEREAS, the Court, by entering this Partial Consent Decree, finds that this Consent Decree is fair, reasonable, in the public interest, and consistent with the CAA, 42 U.S.C. §§ 7401 et seq;

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has subject matter jurisdiction over the claims set forth in the Complaint and to order the relief contained in this Partial Consent Decree. Venue is proper in the United States District Court for the District of Columbia.
2. (a) Pursuant to CAA section 110(c)(1), EPA shall, by December 16, 2011, sign for publication in the Federal Register a notice or notices promulgating a FIP for the State of Texas

that satisfies the requirements of CAA section 110(a)(2)(A), (B), (C) (except to the extent subsection (a)(2)(C) refers to a permit program as required in part D Title I of the CAA), (D)(ii), (E)-(H), (J)-(M), and the requirement in section 110(a)(2)(D)(i)(II) that implementation plans contain adequate provisions prohibiting emissions that will interfere with measures in other states related to prevention of significant deterioration of air quality for the 1997 ozone NAAQS. If, by December 16, 2011, EPA signs a notice or notices unconditionally approving a SIP or promulgating a partial FIP and unconditional approval of a partial SIP, collectively satisfying the requirements of CAA section 110(a)(2)(A), (B), (C) (except to the extent subsection (a)(2)(C) refers to a permit program as required in part D Title I of the CAA), (D)(ii), (E)-(H), (J)-(M), and the requirement in section 110(a)(2)(D)(i)(II) that implementation plans contain adequate provisions prohibiting emissions that will interfere with measures in other states related to prevention of significant deterioration of air quality for the 1997 ozone NAAQS, EPA shall have complied with the obligations of this paragraph.

(b) Pursuant to CAA section 110(c)(1), EPA shall, by December 16, 2011, sign for publication in the Federal Register a notice or notices promulgating a FIP for the State of Texas that satisfies the requirement in CAA section 110(a)(2)(D)(i)(II) that implementation plans contain adequate provisions prohibiting emissions that will interfere with measures in other States related to prevention of significant deterioration of air quality for the 1997 PM_{2.5} NAAQS. If, by December 16, 2011, EPA signs a notice or notices unconditionally approving a SIP or promulgating a partial FIP and unconditional approval of a partial SIP, collectively satisfying the requirement in CAA section 110(a)(2)(D)(i)(II) that implementation plans contain adequate provisions prohibiting emissions that will interfere with measures in other states related

to prevention of significant deterioration of air quality for the 1997 PM_{2.5} NAAQS, EPA shall have complied with the obligations of this paragraph.

(c) EPA shall, by December 16, 2011, sign for publication in the Federal Register a notice or notices of the Agency's final action approving or disapproving, in accordance with CAA section 110(k), the State of Texas' April 4, 2008 SIP submittals for implementation of the 1997 PM_{2.5} NAAQS regarding the requirements of CAA section 110(a)(2)(A), (B), (C) (except to the extent subsection (a)(2)(C) refers to a permit program as required in part D Title I of the CAA), (D)(ii), (E)-(H), (J)-(M).

(d) Pursuant to CAA section 110(c)(1), EPA shall, by November 15, 2012, sign for publication in the Federal Register a notice or notices promulgating a FIP, for the State of Texas that satisfies the CAA requirement in section 110(a)(2)(D)(i)(II) that implementation plans contain adequate provisions prohibiting emissions that will interfere with measures in other States related to the protection of visibility for the 1997 ozone and 1997 PM_{2.5} NAAQS. If, by November 15, 2012, EPA signs a notice or notices unconditionally approving a SIP or promulgating a partial FIP and unconditional approval of a partial SIP, collectively satisfying the requirements of CAA section 110(a)(2)(D)(i)(II) that implementation plans contain adequate provisions prohibiting emissions that will interfere with measures in other States related to the protection of visibility for the 1997 ozone and 1997 PM_{2.5} NAAQS, EPA shall have complied with the obligations of this paragraph.

3. Within ten (10) business days of signing a final rule or determination as described in paragraph 2 of this Partial Consent Decree, EPA shall deliver notice of such actions to the Office of the Federal Register for review and publication. Following such delivery to the Office

of the Federal Register, EPA shall not take any action (other than is necessary to correct typographical errors or other errors in form) to delay or otherwise interfere with the publication of such notices in the Federal Register. In addition, EPA shall provide notice and make available to Plaintiff a copy of each such rule or determination within five (5) business days of delivery to the Office of the Federal Register.

4. The deadlines in paragraph 2 of this Partial Consent Decree may be extended by (a) written stipulation of the Plaintiff and EPA with notice to the Court, or (b) by the Court on a motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the Plaintiff. Any other provision of this Partial Consent Decree may be modified by the Court following motion of Plaintiff or EPA for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any opposition by the non-moving party.

5. Plaintiff and EPA shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

6. Nothing in this Partial Consent Decree shall be construed to limit or modify any discretion accorded EPA by the CAA or by general principles of administrative law in taking the actions which are the subject of this Partial Consent Decree, including the discretion to alter, amend or revise any responses or final actions contemplated by this Decree. EPA's obligation to perform the actions specified in this Partial Consent Decree by the times specified herein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

7. Nothing in this Partial Consent Decree shall be construed as an admission of any issue of fact or law nor to waive or limit any claim, remedy, or defense, on any grounds, related to any final action EPA may take with respect to the actions addressed in this Partial Consent Decree.

8. Nothing in this Partial Consent Decree shall be construed to: (a) confer upon this Court jurisdiction to review any final decision made by EPA pursuant to this Partial Consent Decree; (b) confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to CAA sections 307(b)(1) and 505, 42 U.S.C. §§ 7607(b)(1), 7661d; or (c) waive any claims, remedies, or defenses the Parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

9. The deadline for filing a motion for costs of litigation, including attorneys' fees, incurred prior to entry of this Partial Consent Decree is hereby extended until sixty (60) days after the entry of this Partial Consent Decree by this Court. During this time, the Parties shall seek to resolve informally any claim for costs of litigation, including attorneys' fees, and if they cannot, will submit that issue to this Court for resolution. The United States does not waive or limit any defenses it may have to such claim. This Court shall retain jurisdiction to resolve any requests for costs of litigation, including attorneys' fees.

10. Plaintiff reserves the right to seek additional costs of litigation, including attorneys' fees, incurred subsequent to entry of this Partial Consent Decree and arising from Plaintiff's need to enforce or defend against efforts to modify its terms of the underlying schedule outlined herein, or for any other unforeseen continuation of this action. The United States reserves the right to challenge any such claim.

11. The Parties recognize and acknowledge that the obligations imposed upon EPA under this Partial 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 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.

12. Any notices required or provided for by this Partial Consent Decree shall be made in writing, via facsimile or other means, and sent to the following:

For Plaintiff:

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13. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Decree, the disputing Party shall provide the other Party with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within ten (10) business days after receipt of the notice, either Party may move the Court to resolve the dispute.

14. No motion or other proceeding seeking to enforce this Decree or for contempt of Court shall be properly filed unless Plaintiff has followed the procedure set forth in paragraph 13, and provided EPA with written notice received at least ten (10) business days before the filing of such motion or proceeding.

15. The Court shall retain jurisdiction to determine and effectuate compliance with this Partial Consent Decree. When EPA's obligations under paragraph 2 have been completed, EPA may move to have this Decree terminated. Plaintiff shall have fourteen (14) days in which to respond to such motion.

16. The Parties agree and acknowledge that before this Partial Consent Decree can be finalized and entered by the Court, EPA must provide notice in the Federal Register and an opportunity for comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). EPA will deliver a public notice of this Partial Consent Decree to the Federal Register for publication and

public comment within ten (10) business days after lodging this Partial Consent Decree with the Court. After this Partial Consent Decree has undergone an opportunity for notice and comment, the Administrator and the Attorney General, as appropriate, will promptly consider any such written comments in determining whether to withdraw or withhold consent to this Partial Consent Decree, in accordance with section 113(g) of the CAA. If the Administrator or the Attorney General elects not to withdraw or withhold consent to this Partial Consent Decree, the Parties will promptly file a motion that requests the Court to enter this Partial Consent Decree.

17. The undersigned representatives of each Party certify that they are fully authorized by the Party they represent to bind that Party to the terms of this Partial Consent Decree.

SO ORDERED on this ____ day of _____ 2011.

JUDGE COLLEEN KOLLAR-KOTELLY

SO AGREED:
FOR PLAINTIFF

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DATED: August 26, 2011

FOR DEFENDANT

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DATED: September 12, 2011

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