

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB,

Plaintiff,

v.

REGINA MCCARTHY, in her official  
capacity as Administrator, U.S.  
Environmental Protection Agency,

Defendant.

Case No. 15-cv-01555

**CONSENT DECREE**

This consent decree is entered into by Plaintiff Sierra Club and Defendant Gina McCarthy, in her official capacity as Administrator of the U.S. Environmental Protection Agency (EPA or the Administrator).

WHEREAS, on September 22, 2015, Plaintiff filed a Complaint pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), and amended the Complaint on May 23, 2016, alleging that EPA failed to perform a nondiscretionary duty mandated by Section 110(c)(1)(B) of the Clean Air Act, 42 U.S.C. § 7410(c)(1)(B), which requires the Administrator to promulgate a federal implementation plan (FIP) within two years of disapproving a state implementation plan (SIP), in whole or in part;

WHEREAS, on June 13, 2008, Louisiana submitted a SIP addressing regional haze pursuant to Section 169A(b)(2) of the Clean Air Act, 42 U.S.C. § 7491(b)(2) and EPA's implementing regulations at 40 C.F.R. §§ 51.300-51.309;

WHEREAS, EPA disapproved certain aspects of Louisiana's SIP, effective August 6, 2012, *see* 77 Fed. Reg. 33,642 (June 7, 2012); 77 Fed. Reg. 39,425 (July 3, 2012);

WHEREAS, EPA did not, by August 6, 2014, promulgate a regional-haze FIP or approve a revised regional-haze SIP for Louisiana;

WHEREAS, on March 17, 2015, and again on March 17, 2016, Plaintiff served prior notice on EPA via certified letter alleging that EPA had failed to promulgate a regional-haze FIP for Louisiana within two years of partially disapproving the state's SIP;

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 its obligation under the Clean Air Act;

WHEREAS, Plaintiff and EPA (each a Party and together, 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 all claims in this matter and consent to entry of this consent decree;

WHEREAS, EPA has completed the process for public participation required by Clean Air Act Section 113(g), 42 U.S.C. § 7413(g), and has determined not to withdraw or withhold consent to this consent decree; and

WHEREAS, the Court, by entering this consent decree, finds that it is fair, reasonable, in the public interest, and consistent with the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*

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

1. This Court has subject-matter jurisdiction over the claims set forth in the Complaint pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a)(2).
2. Venue is proper in the United States District Court for the District of Columbia.
3. Pursuant to Section 110(c)(1) of the Clean Air Act, 42 U.S.C. § 7410(c)(1), EPA shall, by March 31, 2017, sign a notice or notices of proposed rulemaking in which EPA proposes approval of a SIP, promulgation of a FIP, or partial approval of a SIP and promulgation of a partial FIP for Louisiana that collectively meet the outstanding regional-haze implementation plan requirements under the Clean Air Act and EPA's regional-haze regulations. *See* 42 U.S.C. §§ 7491-92; 40 C.F.R. §§ 51.300-51.309.
4. Pursuant to Section 110(c)(1) of the Clean Air Act, 42 U.S.C. § 7410(c)(1), EPA shall, by December 15, 2017, sign a notice or notices of final rulemaking approving a SIP, promulgating a FIP, or partially approving a SIP and promulgating a partial FIP for Louisiana that collectively meet the outstanding regional-haze implementation plan requirements under the Clean Air Act and EPA's regional-haze regulations. *See* 42 U.S.C. §§ 7491-92; 40 C.F.R. §§ 51.300-51.309.
5. EPA shall, within 15 business days of signature, deliver notice of each action taken pursuant to Paragraphs 3 and 4 of this Consent Decree to the Office of the Federal Register for review and publication.
6. The deadlines established by this consent decree 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 pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by Plaintiff 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 pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by the non-moving Party and any reply.

7. The Parties shall not challenge the terms of this consent decree or this Court's jurisdiction to enter and enforce this decree.
8. The Parties agree that this consent decree shall constitute a complete and final settlement of all claims that Plaintiff has asserted in this case. Plaintiff therefore discharges and covenants not to sue the United States, including EPA, for any such claims.
9. The Court shall retain jurisdiction over this matter to enforce the terms of this consent decree, to resolve any disputes thereunder, and to consider any requests for costs of litigation, including attorney fees. After EPA's obligations under Paragraphs 3 and 4 have been completed, this case shall be dismissed with prejudice. The Parties shall file the appropriate notice with the Court so that the Clerk may close the file.
10. In the event of a dispute between Plaintiff and EPA concerning 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 are unable to resolve the dispute within 10 business days after receipt of the notice, either Party may petition the Court to resolve the dispute.
11. 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 10.

12. Nothing in this consent decree shall be construed to limit or modify any discretion given EPA by the Clean Air Act or by general principles of administrative law in taking the actions that are the subject of this decree, including the discretion to alter, amend, or revise any responses or final actions contemplated by this consent decree. EPA's obligation to perform the actions specified by Paragraphs 3 and 4 does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.
13. Nothing in this 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 takes as to the SIPs or FIPs identified in Paragraphs 3 and 4.
14. Nothing in this consent decree shall be construed (A) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), or (B) to waive any claims, remedies, or defenses that the Parties may have under Section 307(b)(1), 42 U.S.C. § 7607(b)(1).
15. 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.
16. If a lapse in appropriations for EPA occurs within 120 days before any deadline in Paragraphs 3 and 4, that deadline shall be automatically extended one day for each

day of the lapse in appropriations. Nothing in this paragraph shall preclude EPA from seeking an additional extension through modification pursuant to Paragraph 6.

17. It is hereby expressly understood and agreed that this consent decree was jointly drafted by Plaintiff and EPA. Accordingly, the Parties hereby 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.
18. Any notices required or provided for by this consent decree shall be in writing, via electronic mail or other means, 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 Plaintiff:

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For EPA:

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Environment & Natural Resources Division  
Environmental Defense Section  
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19. The deadline for filing a motion for costs of litigation (including attorney fees) for activities performed before entry of the consent decree is hereby extended until 120 days after the Court enters this decree. During this period, the Parties shall seek to resolve informally any claim for costs of litigation, and if they cannot, Plaintiff may

file a motion for costs of litigation, or a stipulation or motion to extend the deadline to file such a motion. EPA reserves the right to oppose any such request. Plaintiff reserves the right to seek costs of litigation for any work performed after the lodging of this decree; EPA does not concede that Plaintiff will be entitled to fees for any such work. The Parties reserve all claims and defenses as to any future costs-of-litigation claim.

20. 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.
21. The undersigned representatives of Plaintiff and 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 26<sup>th</sup> day of August, 2016

  
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JAMES E. BOASBERG  
UNITED STATES DISTRICT JUDGE

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