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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,² 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
24 ² The Group I Polymers and Resins NESHAP addresses nine different categories. On December
25 16, 2008, EPA published a final determination under sections 112(d)(6) and 112(f)(2) for the
26 following four Group I Polymers and Resins categories: Polysulfide Rubber Production;
27 Ethylene Propylene Rubber Production; Butyl Rubber Production; and Neoprene Production.
28 See 73 Fed. Reg. 76,220. The allegations in Plaintiff's Complaint address only the five Group I
Polymers and Resins categories not covered by the December 2008 action. These categories are
as follows: Epichlorohydrin Elastomers Production; Hypalon™ Production; Nitrile Butadiene
Rubber Production; Polybutadiene Rubber Production; and Styrene Butadiene Rubber and Latex
Production.

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

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

5 (16) Wool Fiberglass Manufacturing, 64 Fed. Reg. 31,695 (June 14, 1999) (40 C.F.R. pt.
6 63 subpt. NNN), Compl. ¶ 13(26);

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

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

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

13 (20) Group IV Polymers and Resins, 61 Fed. Reg. 48,208 (Sept. 12, 1996) (40 C.F.R. pt.
14 63 subpt. JJJ), Compl. ¶ 13(15);

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

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

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

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

23 (25) Phosphoric Acid Manufacturing, 64 Fed. Reg. 31,358 (June 10, 1999) (40 C.F.R. pt.
24 63 subpt. AA), Compl. ¶ 13(11);

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

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

1 (28) Portland Cement Manufacturing Industry, 64 Fed. Reg. 31,898 (June 14, 1999) (40
2 C.F.R. pt. 63 subpt. LLL), Compl. ¶ 13(16).³

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

6 WHEREAS, EPA has not taken final action pursuant to CAA sections 112(d)(6) or
7 112(f)(2) with respect to the source categories identified in the Complaint, *see* EPA Answer ¶ 13
8 (Dkt. No. 43);

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

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

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

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

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

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

23
24
25
26 ³ 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 NOW THEREFORE, before the taking of testimony, without trial or determination of
2 any issues of fact or law, and upon the consent of Plaintiff Sierra Club and Defendant EPA, it is
3 hereby ordered, adjudged and decreed that:

4 1. For the Marine Tank Vessel Loading Operations source category, the EPA
5 Administrator 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 Y
8 (“NESHAP subpart Y”) under CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), or
9 sign a proposed determination that revision of NESHAP subpart Y is not
10 necessary under 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), 42 U.S.C. § 7412(f)(2), or sign a proposed
13 determination that promulgation of such standards is not required under CAA
14 section 112(f)(2); and

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

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

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

22 2. For the Pharmaceuticals Production 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 GGG
25 (“NESHAP subpart GGG”) under CAA section 112(d)(6) or sign a proposed
26 determination that revision of NESHAP subpart GGG is not necessary under
27 CAA 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 March 31, 2011,

5 (i) sign a final rule promulgating revisions to NESHAP subpart GGG under CAA
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
7 GGG 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 3. For the Printing and Publishing Industry source category, the EPA Administrator
12 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 KK
15 (“NESHAP subpart KK”) under CAA section 112(d)(6) or sign a proposed
16 determination that revision of NESHAP subpart KK 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 March 31, 2011,

22 (i) sign a final rule promulgating revisions to NESHAP subpart KK under CAA
23 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
24 KK 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

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

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

4 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart N
5 (“NESHAP subpart N”) under CAA section 112(d)(6) or sign a proposed
6 determination that revision of NESHAP subpart N 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 June 30, 2011,

12 (i) sign a final rule promulgating revisions to NESHAP subpart N under CAA
13 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
14 N 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 5. For the Steel Pickling–HCl Process Facilities and Hydrochloric Acid Regeneration
19 Plants source category, the EPA Administrator shall:

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

21 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart CCC
22 (“NESHAP subpart CCC”) under CAA section 112(d)(6) or sign a proposed
23 determination that revision of NESHAP subpart CCC 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 30, 2011,

1 (i) sign a final rule promulgating revisions to NESHAP subpart CCC under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 CCC 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 6. For the Group I Polymers and Resins source category,⁴ the EPA Administrator shall:

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

9 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart U
10 (“NESHAP subpart U”) under CAA section 112(d)(6) or sign a proposed
11 determination that revision of NESHAP subpart U 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 June 30, 2011,

17 (i) sign a final rule promulgating revisions to NESHAP subpart U under CAA
18 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
19 U 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 7. For the Shipbuilding and Ship Repair (Surface Coating) Operations source category,
24 the EPA Administrator shall:

25 _____
26 ⁴ As explained in footnote two *supra*, the Group I Polymers and Resins NESHAP addresses nine
27 different categories. The obligations in this paragraph apply only to the following five Group I
28 Polymers and Resins categories: Epichlorohydrin Elastomers Production; Hypalon™
Production; Nitrile Butadiene Rubber Production; Polybutadiene Rubber Production; and
Styrene Butadiene Rubber and Latex Production.

1 (a) no later than December 3, 2010,

2 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart II
3 (“NESHAP subpart II”) under CAA section 112(d)(6) or sign a proposed
4 determination that revision of NESHAP subpart II 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 October 31, 2011,

10 (i) sign a final rule promulgating revisions to NESHAP subpart II under CAA
11 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
12 II 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 8. For the Wood Furniture Manufacturing Operations source category, the EPA
17 Administrator shall:

18 (a) no later than December 3, 2010,

19 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart JJ
20 (“NESHAP subpart JJ”) under CAA section 112(d)(6) or sign a proposed
21 determination that revision of NESHAP subpart JJ 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 JJ under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 JJ 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 9. For the Primary Lead Smelting source category, the EPA Administrator shall:

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

9 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart TTT
10 (“NESHAP subpart TTT”) under CAA section 112(d)(6) or sign a proposed
11 determination that revision of NESHAP subpart TTT 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, 2011,

17 (i) sign a final rule promulgating revisions to NESHAP subpart TTT under CAA
18 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
19 TTT 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 10. For the Secondary Lead Smelting source category, the EPA Administrator shall:

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

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

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 December 16, 2011,

5 (i) sign a final rule promulgating revisions to NESHAP subpart X under CAA
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
7 X 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 11. For the Pulp and Paper Production Industry source category, the EPA Administrator
12 shall:

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

14 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart S
15 (“NESHAP subpart S”) under CAA section 112(d)(6) or sign a proposed
16 determination that revision of NESHAP subpart S 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 January 31, 2012,

22 (i) sign a final rule promulgating revisions to NESHAP subpart S under CAA
23 section 112(d)(6) or sign a final determination that revision of NESHAP subpart S
24 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

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

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

4 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart GG
5 (“NESHAP subpart GG”) under CAA section 112(d)(6) or sign a proposed
6 determination that revision of NESHAP subpart GG 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 June 29, 2012,

12 (i) sign a final rule promulgating revisions to NESHAP subpart GG under CAA
13 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
14 GG 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 13. For the Mineral Wool Production source category, the EPA Administrator shall:

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

20 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart DDD
21 (“NESHAP subpart DDD”) under CAA section 112(d)(6) or sign a proposed
22 determination that revision of NESHAP subpart DDD is not necessary under
23 CAA 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 June 29, 2012,
28

1 (i) sign a final rule promulgating revisions to NESHAP subpart DDD under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 DDD 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 14. For the Primary Aluminum Reduction Plants source category, the EPA Administrator
8 shall:

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

10 (i) sign a proposed rule containing revisions to the 40 C.F.R. part 63, subpart LL
11 (“NESHAP subpart LL”) under CAA section 112(d)(6) or sign a proposed
12 determination that revision of NESHAP subpart LL 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 June 29, 2012,

18 (i) sign a final rule promulgating revisions to NESHAP subpart LL under CAA
19 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
20 LL 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 15. For the Ferroalloys Production: Ferromanganese and Silicomanganese source
25 category, the EPA Administrator shall:

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

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

1 determination that revision of NESHAP subpart XXX is not necessary under
2 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) 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 the NESHAP subpart XXX under
8 CAA section 112(d)(6) or sign a final determination that revision of NESHAP
9 subpart XXX 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 16. For the Wool Fiberglass Manufacturing source category, the EPA Administrator
14 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 NNN
17 (“NESHAP subpart NNN”) under CAA section 112(d)(6) or sign a proposed
18 determination that revision of NESHAP subpart NNN 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 NESHAP subpart NNN under CAA
25 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
26 NNN 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 17. For the Secondary Aluminum Production source category, the EPA Administrator
5 shall:

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

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart RRR
8 (“NESHAP subpart RRR”) under CAA section 112(d)(6) or sign a proposed
9 determination that revision of NESHAP subpart RRR 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 August 31, 2012,

15 (i) sign a final rule promulgating revisions to NESHAP subpart RRR under CAA
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
17 RRR 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 18. For the Pesticide Active Ingredient Production source category, the EPA
22 Administrator 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 MMM
25 (“NESHAP subpart MMM”) under CAA section 112(d)(6) or sign a proposed
26 determination that revision of NESHAP subpart MMM is not necessary under
27 CAA 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 November 30, 2012,

5 (i) sign a final rule promulgating revisions to NESHAP subpart MMM under
6 CAA section 112(d)(6) or sign a final determination that revision of NESHAP
7 subpart MMM 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
12 19. For the Polyether Polyols Production source category, the EPA 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 PPP
15 (“NESHAP subpart PPP”) under CAA section 112(d)(6) or sign a proposed
16 determination that revision of NESHAP subpart PPP 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 November 30, 2012,

22 (i) sign a final rule promulgating revisions to NESHAP subpart PPP under CAA
23 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
24 PPP 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).

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

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

4 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart JJJ
5 (“NESHAP subpart JJJ”) under CAA section 112(d)(6) or sign a proposed
6 determination that revision of NESHAP subpart JJJ 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 November 30, 2012,

12 (i) sign a final rule promulgating revisions to NESHAP subpart JJJ under CAA
13 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
14 JJJ 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 21. For the Flexible Polyurethane Foam Production source category, the EPA
19 Administrator shall:

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

21 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart III
22 (“NESHAP subpart III”) under CAA section 112(d)(6) or sign a proposed
23 determination that revision of NESHAP subpart III 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 October 31, 2013,

1 (i) sign a final rule promulgating revisions to NESHAP subpart III under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 III 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 22. For the Acrylic and Modacrylic Fibers 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 the standards for this source
11 category in 40 C.F.R. part 63, subpart YY (“NESHAP subpart YY”) under CAA
12 section 112(d)(6) or sign a proposed determination that revision to the standards
13 for this source category in NESHAP subpart YY is not necessary under CAA
14 section 112(d)(6); and

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

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

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

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

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

27 (a) no later than October 31, 2012,
28

1 (i) sign a proposed rule containing revisions to the standards for this source
2 category in 40 C.F.R. part 63, subpart YY (“NESHAP subpart YY”) under CAA
3 section 112(d)(6) or sign a proposed determination that revision of the standards
4 for this source category in NESHAP subpart YY 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 October 31, 2013,

10 (i) sign a final rule promulgating revisions to the standards for this source
11 category in NESHAP subpart YY under CAA section 112(d)(6) or sign a final
12 determination that revision of the standards in NESHAP subpart YY for this
13 source category 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 24. For the Off-Site Waste and Recovery Operations source category, the EPA
18 Administrator shall:

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

20 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart DD
21 (“NESHAP subpart DD”) under CAA section 112(d)(6) or sign a proposed
22 determination that revision of NESHAP subpart DD 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 October 31, 2013,
28

1 (i) sign a final rule promulgating revisions to NESHAP subpart DD under CAA
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
3 DD 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 25. For the Phosphoric Acid Manufacturing source category, the EPA Administrator
8 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 AA
11 (“NESHAP subpart AA”) under CAA section 112(d)(6) or sign a proposed
12 determination that revision of NESHAP subpart AA 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 AA under CAA
19 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
20 AA 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 26. For the Phosphate Fertilizers Production Plants source category, the EPA
25 Administrator shall:

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

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

1 determination that revision of NESHAP subpart BB 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 BB under CAA
8 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
9 BB 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 27. For the Group III Polymers and Resins – Manufacture of Amino/Phenolic Resins
14 source category, the EPA 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 OOO
17 (“NESHAP subpart OOO”) under CAA section 112(d)(6) or sign a proposed
18 determination that revision of NESHAP subpart OOO 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 October 31, 2013,

24 (i) sign a final rule promulgating revisions to NESHAP subpart OOO under CAA
25 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
26 OOO 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 28. For the Portland Cement Manufacturing Industry source category, the EPA
5 Administrator shall:

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

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart LLL
8 (“NESHAP subpart LLL”) under CAA section 112(d)(6) or sign a proposed
9 determination that revision of NESHAP subpart LLL 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 June 15, 2018,

15 (i) sign a final rule promulgating revisions to NESHAP subpart LLL under CAA
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart
17 LLL 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 29. Within fifteen (15) business days of signing a proposed or final rule or proposed or
22 final determination as described in Paragraphs 1 through 28 of this Consent Decree, EPA shall
23 deliver it to the Office of the Federal Register for prompt publication. In addition, EPA shall
24 provide notice and make available to Plaintiff a copy of each such rule or determination within
25 five (5) business days of delivery to the Office of the Federal Register.

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

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

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

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

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

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

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

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

5 38. EPA and Plaintiff agree that, pursuant to CAA section 304(d), 42 U.S.C. § 7604(d),
6 Plaintiff is both eligible and entitled to recover its costs of litigation in this action, including
7 reasonable attorney fees, incurred prior to entry of this Consent Decree. The deadline for filing a
8 bill of costs pursuant to Local Rule 54-1 and a motion for costs of litigation, including
9 reasonable attorney fees, pursuant to Local Rule 54-6 for activities performed in this case prior to
10 entry of this Consent Decree, is hereby extended until 90 days after the date on which the Court
11 enters this Consent Decree. During this time the parties shall seek to resolve informally any
12 claim for costs of litigation, including reasonable attorney fees.

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

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

23 41. The parties agree and acknowledge that before this Consent Decree is entered by the
24 Court, EPA must provide notice of this Consent Decree in the Federal Register and an
25 opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After
26 this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney
27 General, as appropriate, shall promptly consider any such written comments in determining
28 whether to withdraw or withhold their consent to the Consent Decree, in accordance with CAA

1 section 113(g). If the Administrator and/or the Attorney General do not elect to withdraw or
2 withhold consent, EPA shall promptly file a motion that requests that the Court enter this
3 Consent Decree.

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

7 For Plaintiff Sierra Club: Emma C. Cheuse
8 James S. Pew
9 Earthjustice
10 1625 Massachusetts Avenue, N.W., Suite 702
11 Washington, D.C. 20036
12 Tel: (202) 667-4500
13 Email: echeuse@earthjustice.org
14 Email: jpew@earthjustice.org
15 Sarah H. Burt
16 Earthjustice
17 426 17th Street, 6th Floor
18 Oakland, CA 94612
19 Tel: (510) 550-6700
20 Email: sburt@earthjustice.org


21 For Defendant EPA: Rochelle L. Russell
22 U.S. Department of Justice
23 Environment & Natural Resources Division
24 301 Howard Street, Suite 1050
25 San Francisco, CA 94105
26 Tel: (415) 744-6566
27 Email: rochelle.russell@usdoj.gov

28 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.

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

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

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8 SO ORDERED on this 26th day of September 2011.

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11 SAUNDRA BROWN ARMSTRONG
12 United States District Judge
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COUNSEL FOR PLAINTIFF:

Date: September 27, 2010

/s/ Emma C. Cheuse
EMMA C. CHEUSE
(Appearing *Pro Hac Vice*, D.C. Bar No. 488201)
JAMES S. PEW
(Appearing *Pro Hac Vice*, D.C. Bar No. 448830)
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Attorneys for Plaintiff Sierra Club

COUNSEL FOR DEFENDANT:

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

Date: September 27, 2010

/s/ Rochelle L. Russell
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