

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	Case No. 1:01CV01537
SIERRA CLUB)	(consolidated with
Plaintiff,)	Case No. 1:01CV01548
)	Case No. 1:01CV01558
v.)	Case No. 1:01CV01569
)	Case No. 1:01CV01578
CHRISTINE T. WHITMAN, Administrator,)	Case No. 1:01CV01582
U.S. Environmental Protection Agency)	Case No. 1:01CV01597)
)	
Defendant.)	Judge Paul L. Friedman
_____)	

PARTIAL CONSENT DECREE

WHEREAS, Plaintiff Sierra Club filed these consolidated actions in July 2001, against Defendant Christine T. Whitman, Administrator, U.S. Environmental Protection Agency ("EPA");

WHEREAS, this action involves allegations concerning EPA's obligations under sections of the Clean Air Act, as amended in 1990, see Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399;

WHEREAS, Sierra Club and EPA agree that this Court has jurisdiction under Clean Air Act § 304(a)(2), 42 U.S.C. § 7604(a)(2) over the claims settled herein;

WHEREAS, it is in the interests of the public, the parties, and judicial economy to resolve certain of Sierra Club's claims without further litigation;

WHEREAS, Sierra Club and EPA have agreed to a settlement of certain of Sierra Club's claims, without any admission or adjudication of fact or law, which they consider to be a just, fair, adequate and equitable resolution of said claims;

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of said claims;

WHEREAS, by entering into this Consent Decree, Sierra Club does not waive any claims and EPA does not waive any defenses, on any grounds, related to any matters asserted in this action that are not resolved by this Decree;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

Definition of Terms

1. As used in this Consent Decree, the following terms shall have the following meanings:

(a) "Administrator" means the Administrator of EPA (or the Administrator's authorized representative).

(b) "Promulgate" means signature by the Administrator on a final rule.

(c) "Propose" means signature by the Administrator on a proposed rule.

(d) "Action Dates" means the promulgation dates set forth in paragraph ~~xx2xx~~ below.

(e) "Other Solid Waste Incinerators" means those solid waste incinerators referred to as "other categories of solid waste incineration units" under Clean Air Act § 129(a)(1)(E), 42 U.S.C. § 7419(a)(1)(E).

Claims Resolved and Agency Actions To Be Taken

2. Certain claims in these consolidated cases shall be resolved and the Administrator shall take certain actions, as follows:

Standards under Clean Air Act § 112(d) pursuant to Clean Air Act § 112(e)(1)(E)

(a) the Administrator shall promulgate the emissions standards prescribed by Clean Air Act § 112(d), 42 U.S.C. § 7412(d), for the following 16 categories and/or subcategories of emissions sources listed for regulation pursuant to Clean Air Act § 112(c)(1), 42 U.S.C. § 7412(c)(1):

1. Auto and Light-Duty Truck (Surface Coating)
2. Chlorine Production
3. Combustion Turbines
4. Industrial Boilers, Institutional and Commercial Boilers and Process Heaters (consisting of all sources in the three categories, Industrial Boilers, Institutional and Commercial Boilers, and Process Heaters that burn no hazardous waste).
5. Iron Foundries
6. Lime Manufacturing
7. Metal Can (Surface Coating)
8. Miscellaneous Metal Parts and Products (Surface Coating)(and Asphalt/Coal Tar Application - Metal Pipes)
9. Miscellaneous Organic Chemical Manufacturing (Consisting of the 23 categories included in the following proposal: "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing" 67 Fed. Reg. 16154 (April 4, 2002).)
10. Organic Liquids Distribution
11. Plastic Parts and Products (Surface Coating)
12. Plywood and Composite Wood Products
13. Primary Magnesium Refining
14. Reciprocating Internal Combustion Engines
15. Site Remediation
16. Taconite Iron Ore Processing

These standards shall be promulgated on the following schedule:

(i) On or before August 29, 2003, the Administrator shall promulgate emissions standards for any 12 of the remaining categories and/or subcategories listed in this subparagraph; and

(ii) On or before February 27, 2004, the Administrator shall promulgate emissions standards for the remaining four categories and/or subcategories listed in this subparagraph, and

(b) For (1) industrial, institutional and commercial boilers and process heaters that burn hazardous waste, and (2) furnaces that produce acid from hazardous waste at hydrochloric acid production facilities, the Administrator shall propose emissions standards on or before December 19, 2003, and promulgate a final rule on or before June 14, 2005.

Revision of Standards and Other Requirements for Municipal Waste Combusters

(c) Under Clean Air Act § 129(a)(5), 42 U.S.C. 7429(a)(5), the Administrator shall promulgate revisions of the new source performance standards (NSPS) and emission guidelines (EG) for large (>250 tons per day) municipal waste combustion (MWC) units [40 C.F.R. Part 60 subparts Cb and Eb] on or before April 28, 2006.

Regulation of Area Sources under Clean Air Act § 112(d) Pursuant to Clean Air Act §§ 112(c)(3) and 112(k)

(d) The Administrator shall promulgate regulations under Clean Air Act § 112(d), 42 U.S.C. § 7412(d), pursuant to Clean Air Act § 112(k), 42 U.S.C. § 7412(k), for the following categories and/or subcategories of area sources on or before the following dates:

(i) For Mercury Cell Chlor-Alkali Plants, the Administrator shall promulgate a final rule on or before November 28, 2003;

(ii) For Oil and Natural Gas Production Facilities, the Administrator shall propose a rule on or before June 30, 2005, and promulgate a final rule on or before December 21, 2006;

(iii) For Gasoline Distribution Facilities (Stage I), the Administrator shall propose a rule on or before October 31, 2006, and promulgate a final rule by December 20, 2007.

(iv) For Hospital Sterilizers, the Administrator shall propose a rule on or before October 31, 2006, and promulgate a final rule on or before December 20, 2007; and

(v) For Stationary Internal Combustion Engines that are area sources or are less than 500 horsepower and located at major sources, the Administrator shall propose a rule on or before October 31, 2006, and promulgate a final rule on or before December 20, 2007.

Standards for “Other Solid Waste Incinerators” under Clean Air Act § 129(a)(1)(E)

(e) The Administrator shall propose a rule establishing standards for those solid waste incineration units referred to as “other categories of solid waste incineration units” under Clean Air Act § 129(a)(1)(E), 42 U.S.C. § 7419(a)(1)(E), on or before November 30, 2004, and promulgate a final rule establishing standards for such solid waste incineration units on or before November 30, 2005.

Regulation of Area Sources under Clean Air Act § 112(d) pursuant to Clean Air Act § 112(c)(6)

(f) The Administrator shall promulgate regulations under Clean Air Act § 112(d), 42 U.S.C. § 7412(d), pursuant to Clean Air Act § 112(c)(6), 42 U.S.C. § 7412(c)(6), for the following categories and/or subcategories of area sources on or before the following dates:

(i) For Mercury Cell Chlor-Alkali Plants, the Administrator shall promulgate a final rule on or before November 28, 2003; and

(ii) For Gasoline Distribution Facilities (Stage I), the Administrator shall propose a rule on or before October 31, 2006, and promulgate a final rule by December 20, 2007.

Voluntary Dismissal of Claims in Case No. 01-1582

(g) The Parties stipulate that the claims in Case No 01-1582 (which concern the report to Congress under Clean Air Act § 112(s), 42 U.S.C. § 7412(s)) shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41 (a)(1).

Publication in Federal Register and Distribution

3. EPA shall deliver to the Office of the Federal Register for prompt publication the proposed and final rules covered by this Decree no later than five business days after promulgation of said rules. Following such delivery, EPA shall not take any action (other than as necessary to correct any typographical error or other errors in form) to delay or otherwise interfere with publication of such notices in the Federal Register. In addition, EPA shall make available to Sierra Club, two business days following said promulgation, copies of said standards.

Modification of the Decree

4. Any provision of this Decree may be modified by (a) written stipulation of Sierra Club and EPA with notice to the Court, or (b) by the Court following motion of any party to this Decree, for good cause shown, and upon consideration of any response by the non-moving party.

5. EPA may request modification of an Action Date in accordance with the following procedures:

(a) If EPA seeks to modify an Action Date established by this Decree, and provides notice to Sierra Club of said modification and of the reasons then known for said modification at least 60 days prior to the Action Date sought to be modified and files the motion at least 45 days prior to the Action Date sought to be modified, then the filing of such motion shall, upon request by EPA, stay the Action Date for which modification is sought. Such stay shall remain in effect until the earlier of (i) a dispositive ruling by this Court on such motion, or (ii) the date 30 days after the Action Date sought to be modified.

(b) If EPA seeks to modify an Action Date established by this Decree by 30 days or less, and provides notice to Sierra Club of said modification and of the reasons then known for said modification at least 20 days prior to the Action Date sought to be modified and files the motion at least 15 days prior to the Action Date sought to be modified, then the filing of such motion shall, upon request by EPA, stay the Action Date for which modification is sought. Such stay shall remain in effect until the earlier of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in the motion.

(c) If EPA seeks a modification of an Action Date and does not provide notice pursuant to subparagraphs (a) or (b) above, then any such request for modification shall demonstrate why EPA could not have utilized the notification procedures set forth in subparagraphs (a) or (b) above. The filing of a request pursuant to this subparagraph shall not act to stay the Action Date sought to be modified.

(d) After following the procedures of subparagraphs (a), (b) or (c) above, EPA may move for additional relief, including stays of Action Dates that are the subject of pending motions to modify this Decree.

(e) Any motion to modify the schedule established in this Decree shall be accompanied by a motion for expedited consideration. All parties to this Decree shall join in any motion for expedited consideration associated with a motion to modify filed pursuant to the provisions of subparagraphs (a) or (b) above.

Dismissal of Certain Claims

6. (a) The Court shall retain jurisdiction to effectuate compliance with this Decree and to consider any requests for costs of litigation (including attorney's fees). When EPA's obligations under this Decree have been completed, and all relevant notices have been published in the Federal Register, and any issues concerning costs of litigation (including attorney's fees) have been resolved, this Decree shall be terminated and the following of these consolidated cases shall be dismissed with prejudice: 1:01CV01537; 1:01CV01569; 1:01CV01578 and 1:01CV01582.

(b) Notwithstanding such dismissal and termination, if (1) Plaintiff seeks judicial review in the court of appeals of emissions standards promulgated or other action taken pursuant to this Decree and (2) the court of appeals rules that such challenge is not within its jurisdiction or Plaintiff and EPA agree to dismissal based on EPA's contention that Plaintiff's challenge is not within the jurisdiction of the court of appeals, Plaintiff may reopen this case and this Decree for the specific purpose of arguing that the emissions standards or other action that Plaintiff challenged in the court of appeals do not discharge EPA's obligations under the terms of this Consent Decree. EPA reserves all its defenses to any such argument. Dismissal under subparagraph 6(a) of this Decree, under the conditions heretofore described in this subparagraph (b), would not preclude the bringing of any other lawsuit.

Savings Provisions

7. Nothing in the terms of this Decree shall be construed either (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 Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1) or, (b) to waive any remedies Sierra Club may have under Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1).

8. Nothing in this Decree shall be construed to limit or modify any discretion EPA may have to alter, amend or revise regulations promulgated pursuant to this Decree, from time to time, or to promulgate superseding regulations.

9. Except as expressly provided herein, nothing in this 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 Decree.

10. Nothing in this Decree relieves EPA of the obligation to act in a manner consistent with the Clean Air Act and other applicable statutes. The obligations imposed on EPA under Paragraph 2 of this Consent Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

Section 113(g)

11. The parties agree and acknowledge that final approval and entry of this proposed Decree are subject to the requirements of Clean Air Act § 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed Decree be given to the public, that the public

shall have a reasonable opportunity to make any comments, and that the Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Decree.

Dispute Resolution

12. In the event of a disagreement between the parties concerning the interpretation of any aspect of this Consent Decree, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute. If the parties are unable to resolve the dispute, then either party may petition the Court to resolve the dispute.

Signature of the Parties

13. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to the Court's entry of the terms and conditions of this Decree.

Costs of Litigation (Including Attorney's Fees)

14. Notwithstanding Local Rule 215(a) and Fed. R. Civ. P. 54, the parties shall seek to resolve informally any claim for costs of litigation (including attorney's fees), and if they cannot, will submit that issue to the Court for resolution. The Court will retain jurisdiction to resolve any such request for the costs of litigation (including attorney's fees) notwithstanding any dismissal pursuant to paragraph 6 above.

BY THE COURT:

United States District Judge

Date: _____

Approved by Counsel for the Parties:

For Plaintiff SIERRA CLUB

Date: _____

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