

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

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AIR ALLIANCE HOUSTON, <i>et al.</i> ,		)	
		)	
		)	Case No. 1:13-cv-00621 (KBJ)
	Plaintiffs,	)	
		)	
	v.	)	
		)	
GINA McCARTHY, Administrator, United		)	<b><u>CONSENT DECREE</u></b>
States Environmental Protection Agency, in		)	
her official capacity,		)	
		)	
	Defendant.	)	
		)	
		)	
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WHEREAS, on May 1, 2013, Plaintiffs, Air Alliance Houston, Community In-Power and Development Association, Inc., Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services, filed their Complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), failed to perform nondiscretionary duties under Clean Air Act (“CAA”) Section 130, 42 U.S.C. § 7430. Specifically, Plaintiffs allege that EPA failed to review and, if necessary, revise the emission factors for volatile organic compounds (“VOCs”), carbon monoxide, and nitrogen oxides at least once every three years. 42 U.S.C. § 7430.

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 complete a review of the VOC emission factors for flares, liquid storage tanks (“tanks”), and wastewater collection, treatment, and storage systems (“wastewater treatment systems”) identified in the Complaint, and either

revise these factors or make a final determination that revision is not appropriate as required by CAA Section 130, 42 U.S.C. § 7430;

WHEREAS, EPA has not conducted a review of the VOC emission factors for flares, tanks, and wastewater treatment systems identified in the Complaint or revised these factors under CAA Section 130, 42 U.S.C. § 7430 in over three years;

WHEREAS, EPA maintains an official Compilation of Air Pollutant Emission Factors, referred to as AP-42;

WHEREAS, EPA has issued a series of reports known as the Locating and Estimating Air Toxics Emissions Report (“L&E Report”) that contains available information on source categories of toxic air emission and identifies potential release points and emission factors;

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

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

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

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

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

WHEREAS, the Parties agree that this Court has jurisdiction over this matter pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue is

proper in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(e);

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

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

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

2. For the VOC emissions factors for flares, tanks and wastewater treatment systems identified in the Complaint, the EPA Administrator shall:

a. No later than August 19, 2014:

- (i) review and either propose revisions to the VOC emission factors for flares under CAA section 130, 42 U.S.C. § 7430, or propose a determination that revision of the VOC emission factors for flares is not necessary under CAA section 130;
- (ii) review and either propose revisions to the VOC emission factors for tanks under CAA section 130, 42 U.S.C. § 7430, or propose a determination that revision of VOC emission factors for tanks is not necessary under CAA section 130;
- (iii) review and either propose revisions to the VOC emission factors for wastewater treatment systems under CAA section 130, 42

U.S.C. § 7430, or propose a determination that revision of VOC emission factors for wastewater treatment systems is not necessary under CAA section 130;

b. No later than December 19, 2014:

- (i) issue final revisions to the VOC emission factors for flares under CAA section 130, or issue a final determination that revision of VOC emission factors for flares is not necessary under CAA section 130;
- (ii) issue final revisions to the VOC emission factors for tanks under CAA section 130, 42 U.S.C. § 7430, or issue a final determination that revision of the VOC emission factors for tanks is not necessary under CAA section 130;
- (iii) issue final revisions to the VOC emission factors for wastewater treatment systems under CAA section 130, 42 U.S.C. § 7430, or issue a final determination that revision of the VOC emission factors for wastewater treatment systems is not necessary under CAA section 130.

3. EPA shall post each proposed revision or determination (or combination thereof), and each final revision or determination (or combination thereof), as described in paragraph 2 of this Consent Decree, on its AP-42 website (located at <http://www.epa.gov/ttn/chief/ap42/>) on the dates described in paragraph 2. In addition, EPA shall provide a copy of each such action to Plaintiffs' counsel indicated in Paragraph 15 within seven (7) days of posting.

4. Once EPA has completed all of the actions set forth above and after the final actions required by paragraphs 2 and 3 have been completed, EPA may move to have this Consent Decree terminated, and the action dismissed. Plaintiffs shall have thirty (30) days in which to respond to such motion.

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

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

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

8. Nothing in the terms of this Consent Decree shall be construed (a) to confer upon this Court jurisdiction to review any final rule or determination issued by EPA pursuant to this Consent Decree, (b) to confer upon this Court jurisdiction to review any issues that are within the

exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1), or (c) to waive any claims, remedies, or defenses that the Parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

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

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

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

12. Plaintiffs reserve the right to seek additional costs of litigation, including attorney fees, incurred subsequent to entry of this Consent Decree and arising from Plaintiffs' need to enforce or defend against efforts to modify its terms or the underlying schedule outlined herein,

or for any other unforeseen continuation of this action. EPA reserves the right to oppose any such request.

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

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

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

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

Jennifer Duggan

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1000 Vermont Avenue, Suite 1100  
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b. For Defendant EPA:

Michele L. Walter  
United States Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044  
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16. EPA and Plaintiffs recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

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

18. The undersigned representatives of Defendant EPA and Plaintiffs Air Alliance Houston, Community In-Power and Development Association, Inc., Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services certify that they are fully authorized by the party they represent to consent to the Court's entry of the terms and conditions of this Consent Decree.

COUNSEL FOR PLAINTIFFS:

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

/s/ \_\_\_\_\_

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*Counsel for Plaintiffs Air Alliance Houston,  
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Association, Inc., Louisiana Bucket Brigade, and  
Texas Environmental Justice Advocacy Services*

COUNSEL FOR DEFENDANT:

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

/s/ \_\_\_\_\_

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*Counsel for Defendant EPA*

SO ORDERED on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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KETANJI BROWN JACKSON  
United States District Judge