

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____ )	
DEFENDERS OF WILDLIFE and SIERRA )	
CLUB )	
)	
Plaintiffs, )	
)	
v. )	Case No.:
)	
LISA P. JACKSON, )	
Administrator, United States )	
Environmental Protection Agency, )	
)	
Defendant. )	
_____ )	

**CONSENT DECREE**

WHEREAS, Plaintiffs Defenders of Wildlife and Sierra Club (jointly referred to as “Plaintiffs”) filed the complaint in this action against Defendant Lisa P. Jackson, Administrator of the United States Environmental Protection Agency (referred to herein as “EPA”);

WHEREAS, Plaintiffs’ complaint alleges that EPA failed to perform its obligation under section 301(d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(d), to “review[] [the effluent limitations for the Steam Electric Power Generating Point Source category] at least every five years, and, if appropriate, revise[]” the effluent limitations;

WHEREAS, Plaintiffs’ complaint alleges that EPA has failed to perform its obligation under section 304(b) of the CWA, 33 U.S.C. § 1314(b), to “at least annually . . . revise, if appropriate,” the effluent limitations guidelines for the Steam Electric Power Generating Point Source category (referred to herein as “Steam Electric Effluent Guidelines”);

WHEREAS, EPA discussed rulemaking concerning the Steam Electric point source category in its Preliminary 2010 Effluent Guidelines Program Plan, published in the Federal Register on December 28, 2009;

WHEREAS, Plaintiffs seek an order from this Court establishing a deadline by which EPA must make a final decision with respect to revisions to the Steam Electric Effluent Guidelines described above;

WHEREAS, the Parties agree that resolution of Plaintiffs' Claim for Relief without further litigation is in the best interest of the Parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving Plaintiffs' Claim for Relief:

NOW THEREFORE, before the taking of testimony, without admission or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 33 U.S.C. § 1365(a)(2).
2. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because substantial parts of the alleged events or alleged omissions giving rise to the claims occurred in the District of Columbia.

#### **EPA OBLIGATIONS**

3. No later than July 23, 2012, the EPA Administrator shall sign (and promptly thereafter transmit to the Office of the Federal Register) a notice of proposed rulemaking pertaining to revisions to the Steam Electric Effluent Guidelines under the Clean Water Act. In addition, EPA shall provide Plaintiffs with a copy of the aforementioned proposed rule within five business days of signature.

4. No later than January 31, 2014, the EPA Administrator shall sign (and promptly thereafter transmit to the Office of the Federal Register) a decision taking final action following notice and comment rulemaking pertaining to revisions to the Steam Electric Effluent Guidelines under the Clean Water Act. In addition, EPA shall provide Plaintiffs with a copy of that final action within five business days of signature.

#### **EXTENSIONS AND MODIFICATIONS**

5. This Consent Decree may be modified by written agreement of the parties and approval of the Court. Any dates set forth in this Consent Decree may be extended by written agreement of the parties and notice to the Court. To the extent the parties are not able to agree to an extension, EPA may seek a modification of this Consent Decree in accordance with the procedures specified below.

6. (a) If EPA files a motion pursuant to Paragraph 5 requesting modification of a date or dates established by this Consent Decree and provides notice to the other party at least sixty (60) days prior to filing such motion, and files the motion at least forty-five (45) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought.

(b) Such extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by this court on such motion, or (ii) 180 days after the date for which modification is sought.

7. If EPA does not provide notice pursuant to Paragraph 6 above, EPA may move the court for a stay of the date for which modification is sought. EPA shall give notice to Plaintiffs as soon as possible of its intent to seek a modification or stay of the date sought to be

modified. The filing of a motion pursuant to Paragraph 7 will not stay the date for which modification is sought.

8. If the Court denies a motion by EPA to modify a date established by this Consent Decree, but the date had been stayed pending the Court's ruling on the motion for modification, then the date for performance for which modification had been requested shall be such date as the Court may specify.

9. Any motion to modify the schedule established in this Consent Decree shall be accompanied by a motion for expedited consideration.

#### **CONTINUING JURISDICTION AND TERMINATION**

10. The Court shall retain jurisdiction to effectuate compliance with this Consent Decree. When EPA's obligations under paragraphs 3 and 4 of this Consent Decree have been completed, then 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.

#### **DISPUTE RESOLUTION**

11. 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 15 business days after receipt of the notice, then either party may move the Court to resolve the dispute.

#### **GENERAL PROVISIONS**

12. This Agreement shall not constitute or be construed as an admission or adjudication by any party of any question of fact or law with respect to claims raised in this

action. Nor is it an admission of violation of any law, rule, regulation, or policy by the United States or EPA.

13. The obligations imposed by EPA under Paragraphs 3 and 4 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 or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

14. Nothing in this Consent Decree shall be construed to limit or modify any discretion EPA may have to alter, amend, or revise the actions taken pursuant to Paragraphs 3 and 4 of this Consent Decree.

15. Nothing in the terms of this Consent Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act or by general principles of administrative law in taking the actions referred to in Paragraphs 3 and 4. EPA's obligation to perform the actions specified in Paragraphs 3 and 4 of this Decree, by the dates specified in said Paragraphs, does not constitute a limitation or modification of EPA's discretion within the meaning of this Paragraph.

16. Nothing in the terms of this Consent 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 section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1), or (b) to waive any remedies plaintiffs may have under section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1). Nothing in the terms of this Decree shall be construed to confer upon the district court jurisdiction to review any decision, either procedural or

substantive, to be made by EPA pursuant to this Decree, except for the purpose of determining EPA's compliance with this Decree.

17. 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.

18. 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 or defense, on any grounds, related to any final action EPA may take with respect to the actions addressed in this Consent Decree.

#### **ATTORNEYS' FEES AND COSTS**

19. The United States, on behalf of EPA, agrees to pay Plaintiffs in full settlement of all claims for attorneys' fees, costs, and expenses incurred as of the date this Consent Decree is entered by the district court the sum of \$40,000, as soon as reasonably practicable, by electronic funds transfer in accordance with instructions provided to the undersigned defense counsel by counsel for the Plaintiffs. Nothing in this Paragraph shall be construed as an admission or concession by EPA that Plaintiffs are entitled to or eligible for recovery of any costs or attorneys' fees.

#### **RECIPIENTS OF NOTIFICATION**

20. Any notices required or provided for by this Decree shall be in writing, effective upon receipt, and sent to the following:

For Plaintiffs:

Jennifer S. Peterson

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For Defendant:

Chief  
Environmental Defense Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Attn: DJ # 90-5-1-4-18642

Associate General Counsel  
Water Law Office  
U.S. Environmental Protection Agency  
Office of General Counsel  
Mail Code 2355A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

#### **EFFECTIVE DATE**

21. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the District Court does not enter this Consent Decree, the obligations set forth in this Decree are null and void.

#### **SIGNATURE OF PARTIES**

22. 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 Consent Decree.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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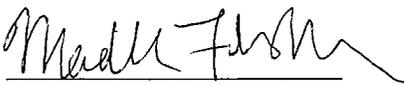
UNITED STATES DISTRICT COURT JUDGE

Approved by Counsel for the Parties:

FOR DEFENDANT:

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

Dated: 11/5/10

  
MADELINE P. FLEISHER  
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U.S. Department of Justice  
P.O. Box 23986  
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*Of counsel:*  
SIMMA A. KUPCHAN  
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Office of General Counsel - 2355A  
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FOR PLAINTIFFS:

Dated: 11/4/10

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Dated: 11/4/10

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