

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN LUNG ASSOCIATION and)
NATIONAL PARKS CONSERVATION)
ASSOCIATION,)
)
Plaintiffs,)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, and LISA)
JACKSON, Administrator, United States)
Environmental Protection Agency,)
)
Defendants.)

Civil Action No. 1:12-cv-00243-RLW
(Judge Robert L. Wilkins)

STATE OF NEW YORK, et al.,)
)
Plaintiffs,)

v.)

LISA P. JACKSON, as Administrator of the)
Environmental Protection Agency, and the)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Defendants.)

Civil Action No. 1:12-cv-00531-RLW
(Judge Robert L. Wilkins)

CONSENT DECREE

WHEREAS, Plaintiffs American Lung Association and National Parks Conservation Association (“ALA” and “NPCA”) initiated this action against the United States Environmental Protection Agency and Lisa Jackson, Administrator (collectively, “EPA” or the “Agency”), with a complaint filed on February 14, 2012, alleging that EPA has violated a nondiscretionary duty under the Clean Air Act, 42 U.S.C. § 7409(d)(1), to complete a five-year review of the national ambient air quality standards (“NAAQS”) for particulate matter, and seeking declaratory and

injunctive relief as well as attorney's fees and other costs of litigation pursuant to 42 U.S.C. § 7604(a);

WHEREAS, Plaintiffs the States of New York, California, Connecticut, Delaware, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont and Washington (collectively, the "States") filed a complaint in the United States District Court for the Southern District of New York on February 10, 2012, alleging the same statutory violation and seeking similar relief. The States' complaint was subsequently transferred to this Court by a joint stipulation and order, and was then consolidated with the instant action by Order of this Court on April 13, 2012;

WHEREAS, both complaints were filed pursuant to 42 U.S.C. § 7604(a)(2), which authorizes suits against EPA alleging that the Agency has failed to perform a nondiscretionary duty required by the Clean Air Act;

WHEREAS, ALA and NPCA filed an application for preliminary and permanent injunction, and both the States and EPA filed cross-motions for summary judgment as to remedy, all of which were argued at a motions hearing on May 31, 2012;

WHEREAS, the Court issued an Order on June 2, 2012, granting in part the application for preliminary injunction, and subsequently modified that Order on June 6, 2012. The modified Order requires that EPA sign a notice of proposed rulemaking no later than June 14, 2012, seek expedited publication of that notice in the Federal Register, and schedule and hold public hearing/s and hold a public comment period on the proposed rulemaking such that the comment period shall close no later than nine weeks following the date of publication of the notice in the Federal Register. The Order reserves judgment on all other relief sought by the application for injunction and the cross-motions for summary judgment as to remedy;

WHEREAS, the Parties wish to effectuate a settlement of the remaining aspects of the instant action not resolved by the Court's June 2 order (as modified in part on June 6), and the terms of that settlement are set forth in this Consent Decree;

WHEREAS, the Parties agree that this Consent Decree represents a good-faith compromise of disputed claims; and

WHEREAS, the Court, by entering this Consent Decree, finds that the Decree 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 undecided issue of fact or law, and upon the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

JURISDICTION, VENUE AND PARTIES

1. This Court has subject-matter jurisdiction over the claims set forth in the above-referenced complaints and to order the relief contained in this Consent Decree. Venue is proper in the United States District Court for the District of Columbia.

2. The Parties to this Consent Decree are ALA, NPCA, the States (collectively, "Plaintiffs") and EPA. There are no third-party beneficiaries of this Consent Decree.

EPA OBLIGATIONS

3. No later than December 14, 2012, EPA shall sign a notice of final rulemaking setting forth its final decision pursuant to 42 U.S.C. § 7409(d)(1) concerning its review of the NAAQS for particulate matter and promulgating such revisions to the NAAQS and/or promulgating such new NAAQS as may be appropriate in accordance with 42 U.S.C. §§ 7408 and 7409(b).

4. EPA shall seek expedited publication in the Federal Register of the notice of final rulemaking signed pursuant to Paragraph 3 above, and shall deliver said notice to the Office of the Federal Register for publication no later than three business days following signature of the notice. Following such delivery to the Office of Federal Register, EPA shall not take any action (other than is necessary to correct typographical errors or other errors in form) to delay or otherwise interfere with publication of the notice in the Federal Register. EPA shall also make available to Plaintiffs a signed copy of the notice of final rulemaking no later than three business days following signature of the notice.

5. EPA shall establish the effective date of the final decision described in Paragraph 3 above such that any final rule shall become effective, barring intervening congressional or judicial action, on the earliest date that complies with the Congressional Review Act, 5 U.S.C. § 801 *et seq.*

MODIFICATION OF THIS CONSENT DECREE AND DISPUTE RESOLUTION

6. The Parties may extend the deadline established in Paragraph 3 by written stipulation executed by counsel for all Parties and filed with the Court on or before the date of that deadline; such extension shall take effect immediately upon filing the stipulation. In addition, EPA reserves the right to file with the Court a motion seeking to modify any deadline or other obligation imposed on EPA by Paragraphs 3, 4, 5 or 14. EPA shall give Plaintiffs at least five business days' written notice before filing such a motion. Plaintiffs reserve their rights to oppose any such motion on any applicable grounds.

7. Any other provision of this Consent Decree may be modified by mutual written agreement of the Parties and order of the Court.

8. In the event of a dispute among the Parties concerning the interpretation or implementation of, or compliance with, any provision of this Consent Decree, the disputing Party shall give the other Parties a written notice explaining the nature of the dispute and requesting informal negotiations. If the Parties cannot in good faith reach an agreed-upon resolution within ten business days after receipt of the notice, any Party may move the Court to resolve the dispute.

CONTINUING JURISDICTION AND TERMINATION

9. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. When EPA's obligations under Paragraphs 3 through 5 above have been completed, and the Plaintiffs' claims for costs of litigation have been resolved as provided in Paragraph 16, the Parties shall file a joint motion to terminate this Consent Decree, except that if there is a dispute regarding whether EPA has completed its obligations, the Parties shall follow the procedures set forth in Paragraph 8.

SAVINGS PROVISIONS

10. The obligations imposed on EPA under this Consent Decree may only be undertaken using appropriated funds. No provision of this Consent 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.

11. Nothing in this Consent Decree shall be construed as an admission by any Party with respect to any issue of fact or law, or to waive or limit any claim or defense on any grounds except as expressly provided in this Consent Decree.

12. Nothing in this Consent Decree shall be construed to limit, expand, or otherwise modify the discretion accorded to EPA by the Clean Air Act or by general principles of administrative law, including the discretion to alter, amend or revise any final action EPA takes pursuant to Paragraph 3, except the deadline specified therein. EPA's obligation to perform the actions described in Paragraphs 3 through 5 by the times specified therein does not constitute a limitation, expansion or other modification of EPA's discretion within the meaning of this paragraph.

13. Nothing in this Consent Decree shall be construed to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Court of Appeals pursuant to 42 U.S.C. § 7607(b)(1), including but not limited to judicial review of any final action taken by EPA pursuant to Paragraph 3 or 5 above. Nothing in this Consent Decree shall be construed to waive any remedies or defenses the Parties may have under 42 U.S.C. § 7607(b)(1) with respect to such final action.

NOTICE AND COMMENT UNDER 42 U.S.C. § 7413(g)

14. The Parties agree and acknowledge that before this Consent Decree may be finalized and entered by the Court, EPA must provide notice of the Consent Decree in the Federal Register and an opportunity for comment pursuant to 42 U.S.C. § 7413(g). EPA shall expeditiously prepare such notice and, within 7 days of lodging this Consent Decree with the Court, submit it to the Office of Federal Register for publication. After the Consent Decree has undergone the statutorily-required notice and comment opportunity, the Administrator of EPA and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold consent to this Consent Decree in accordance with 42 U.S.C. § 7413(g). The Parties shall have until August 31, 2012, to file a motion to enter this

Consent Decree. In the event the Administrator and/or the Attorney General has not determined by that date whether to withdraw or withhold consent to this Consent Decree, Parties shall file such other motion/s as may be appropriate in accordance with Paragraph 6 of this Consent Decree.

15. No Party shall challenge any term of this Consent Decree or this Court's jurisdiction to enter and enforce the Consent Decree. This paragraph shall not be construed to limit or modify the discretion of the Administrator and/or the Attorney General pursuant to 42 U.S.C. § 7413(g).

COSTS OF LITIGATION

16. No later than 180 days after EPA completes its obligation under paragraph 3 of this Consent Decree, Plaintiffs may apply to the Court for an award of costs of litigation, including attorneys' fees, pursuant to 42 U.S.C. § 7604(d). EPA reserves any and all defenses or responses to any such application.

NOTICE TO PARTIES

17. Any notice required by or given in connection with this Consent Decree shall be made in writing, via facsimile, electronic mail or overnight delivery, and shall be sent to the following:

For ALA:

Paul R. Cort
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
Phone: (415) 217-2077
Fax: (415) 271-2040
Email: pcort@earthjustice.org

David S. Baron
Earthjustice
1625 Massachusetts Avenue, NW, Suite 702
Washington, DC 20036-2212
Phone: (202) 667-4500
Fax: (202) 667-2356
Email: dbaron@earthjustice.org

For the State Plaintiffs:

Michael J. Myers
Jane C. Cameron
Assistant Attorneys General
Environmental Protection Bureau
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The Capitol
Albany, NY 12224
Phone: (518) 402-2594
Fax: (518) 473-2534
Email: michael.myers@ag.ny.gov
jane.cameron@ag.ny.gov

For EPA:

BRIAN H. LYNK
United States Department of Justice
Environmental Defense Section
601 D Street, NW, Suite 8000
Washington, DC 20004
Phone: 202-514-2219
Fax: 202-514-8865
Email: brian.lynk@usdoj.gov

For U.S. Postal Service Overnight Mail Only:
P.O. Box 7611
Washington, DC 20044

EFFECT OF SIGNATURE

18. This Consent Decree may signed in any number of separate counterparts. Once all Parties have signed, each separate counterpart shall be deemed to constitute an agreement among all Parties, subject to Paragraph 19.

19. This Consent Decree shall become effective upon entry by the Court following the process described in Paragraph 14. If the Administrator and/or the Attorney General elects to withdraw or withhold consent at the conclusion of that process, then this Consent Decree shall not take effect and the Parties reserve any and all rights.

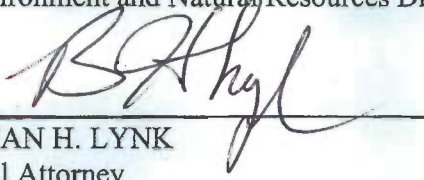
20. The undersigned representatives of each Party hereby certify that they are fully authorized by the Party or Parties they represent to bind that Party to the terms of this Decree, subject to Paragraph 19.

SO ORDERED on this 4th day of September, 2012.

ROBERT L. WILKINS
United States District Judge

FOR EPA

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

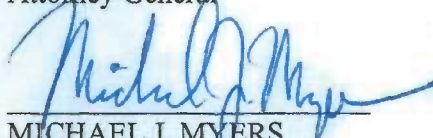
By: 

August 31, 2012

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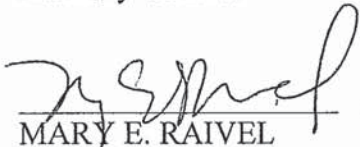
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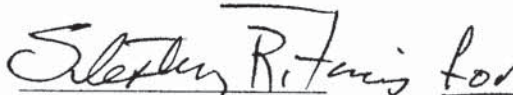
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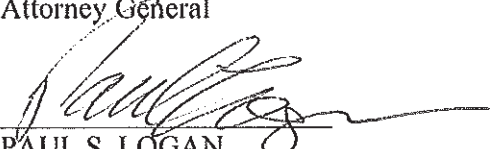
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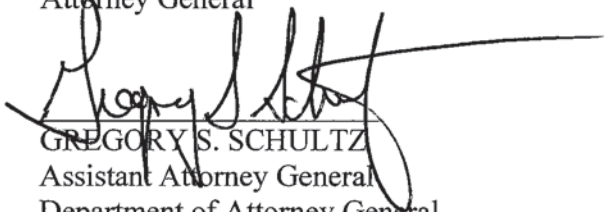
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